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What Global Human Rights Obligations Do We Have?

Elena Pribytkova*

Abstract

This Article explores global human rights obligations, which form the least elucidated and the most unfulfilled type of extraterritorial obligations. Global obligations represent a key legal tool for empowering the most vulnerable individuals and social groups, promoting social justice, and reducing extreme poverty and inequality worldwide. Despite their importance, global obligations have not yet received adequate legal recognition, regulation, and realization. The Article outlines the main contours of the conception of global obligations. While defending a human rights-based cosmopolitan concept of justice, it addresses issues surrounding the nature, status, content, scope, and hierarchy of moral duties towards non-compatriots and shows under which conditions and to what extent these duties should be recognized as human rights obligations of multiple actors. The Article aims to demonstrate that global obligations are morally justified human rights obligations that bind all members of the international community and require their legal regulation and implementation. It suggests a new classification of global obligations and stresses their significance for the enjoyment of guarantees of relational and distributive justice, as well as for promoting a shift from a state-centered to human-centered global order. It also seeks to uncover the interrelation between philosophical discourse, normative legal order, and legal practice. The Article explains how contemporary theories of global justice can contribute to the justification, conceptualization, allocation, and implementation of global obligations. It translates philosophical ideas into the language of law and incorporates empirical findings in relation to global obligations. At the same time, it examines whether human rights theory and practice regarding global obligations are capable of, and essential to, solving widely debated issues of global justice.

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I. INTRODUCTION

*I am in no way beneath thee in moral worth and . . . , as a person, I am equal to thee.*¹

*All human beings are born free and equal in dignity and rights.*²

In the modern globalized world, actions of multiple global actors—states, intergovernmental organizations (IGOs)³ and non-state actors (NSAs)⁴—have a crucial impact on the enjoyment of human rights by individuals worldwide, especially by those in poverty. Examples of such actions include wars and military interventions, unfair trade and investment policies, inadequate international financial regulations and illicit financial flows, harmful exploitation of natural resources, environmental destruction, economic sanctions, and injurious development aid programs. Extraterritorial obligations⁵ are a key legal tool for holding global actors accountable for their human rights violations, promoting social justice, and reducing extreme poverty and inequality worldwide. Despite their importance, extraterritorial obligations have not yet received adequate legal recognition, regulation, and realization. Scholars and practitioners have noted major discrepancies between globalization and contemporary human rights law:⁶ obligations corresponding to economic, social, and cultural rights (socio-economic rights) are still often considered to be applicable only within states' borders (if at all);⁷ obligations of IGOs and NSAs are frequently believed to be

¹ FYODOR DOSTOEVSKY, A WRITER'S DIARY 512 (2009).

² G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 1 (Dec. 10, 1948) [hereinafter UDHR].

³ For example, U.N. agencies, the World Bank, and the International Monetary Fund.

⁴ For example, non-governmental organizations and foundations, transnational corporations, religious groups, paramilitary and armed resistance groups.

⁵ Extraterritorial obligations are neither horizontal obligations of actors that are non-subordinate to one another (such as states and NSAs), nor vertical obligations between actors at different levels of hierarchy (such as state governments and their citizens). Rather, they are diagonal obligations of global actors towards individuals. On the usage of and interrelation between various terms for describing extraterritorial obligations, see Mark Gibney, *On Terminology: Extraterritorial Obligations*, in GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW 32 (Malcom Langford et al. eds., 2013).

⁶ See, for example, Wouter Vandenhoe, *Emerging Normative Frameworks on Transnational Human Rights Obligations* 1 (EUI Working Paper, Law 2012/17), <http://perma.cc/RU5B-V8Z4>; Nehal Bhuta, *The Frontiers of Extraterritoriality—Human Rights Law as Global Law*, in THE FRONTIERS OF HUMAN RIGHTS: EXTRATERRITORIALITY AND ITS CHALLENGES 1 (Nehal Bhuta ed., 2016); ARNE VANDENBOGAERDE, TOWARDS SHARED ACCOUNTABILITY IN INTERNATIONAL HUMAN RIGHTS LAW: LAW, PROCEDURES AND PRINCIPLES 1–5 (2016).

⁷ ETO Consortium, *The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* 3 (2013).

exhausted by negative duties to respect human rights;⁸ and existing remedies for the violation of extraterritorial obligations in the area of socio-economic rights are very limited and difficult to access for individual claimants.⁹ A wide area of extraterritorial relations remains, therefore, an accountability-free zone.

Global actors, as members of the international community, are responsible not only for the human rights violations they cause but also for the realization of socio-economic rights universally. The latter type of extraterritorial obligations is called “obligations of a global character” or “global obligations.”¹⁰ As the least elucidated and the most unfulfilled type of extraterritorial obligations, global obligations form the subject of this study.

In comparison to extraterritorial obligations concerning civil and political rights, extraterritorial obligations relating to socio-economic rights are substantially less examined. Furthermore, neither researchers nor practitioners have comprehensively explored the nature, status, content, scope, right-holders, and duty-bearers of global obligations, which correspond to socio-economic rights, and the mechanisms necessary for their implementation.

The history of the study of global obligations can be divided into three major periods. The first is a preparatory period characterized by fragmentary research on diverse aspects of global obligations, including global obligations presupposed by international human rights instruments,¹¹ those corresponding to certain socio-economic rights,¹² and global commitments derived from the right to

⁸ See SIGRUN I. SKOGLY, *THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* 151–52 (2001); John Ruggie, *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, ¶ 66, U.N. Doc. E/CN.4/2006/97 (Feb. 22, 2006).

⁹ See, for example, Ashfaq Khalfan, *Division of Responsibility Amongst States*, in GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW 299, 301 (Malcolm Langford et al. eds., 2013); VANDENBOGAERDE, *supra* note 6, at 89–140.

¹⁰ See ETO Consortium, *supra* note 7, at 6 (principle 8 of the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights [hereinafter the Maastricht Principles]).

¹¹ See, for example, SIGRUN I. SKOGLY, *BEYOND NATIONAL BORDERS: STATES' HUMAN RIGHTS OBLIGATIONS IN INTERNATIONAL COOPERATION* (2006); Magdalena Sepúlveda, *Obligations of 'International Assistance and Cooperation' in an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 24 NETH. Q. HUM. RTS. 271 (2006); Wouter Vandenhoe, *Economic, Social and Cultural Rights in the CRC: Is There a Legal Obligation to Cooperate Internationally for Development?*, 17 INT'L J. CHILD. RTS. 23 (2009); Michael Wabwile, *Implementing the Social and Economic Rights of Children in Developing Countries: The Place of International Assistance and Cooperation*, 18 INT'L J. CHILD. RTS. 355 (2010); Fons Coomans, *The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights*, 11 HUM. RTS. L. REV. 1 (2011).

¹² See, for example, Sigrun I. Skogly, *Right to Adequate Food: National Implementation and Extraterritorial Obligations*, 11 MAX PLANCK Y.B. U.N. L. 339 (2007); Judith Bueno de Mesquita et al., *The Human*

development and the Millennium Development Goals.¹³

The second period is associated with the adoption of a milestone soft law document, the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011) (hereinafter the Maastricht Principles),¹⁴ and commentaries to it¹⁵ that provided an important systematic exposition of the general principles, definition, and types of states' extraterritorial obligations. The Maastricht Principles have great merit because, unlike soft law principles governing extraterritorial obligations of other actors,¹⁶ they recognize states' "obligations of a global character." At the same time, the Maastricht Principles are limited in several important respects: (1) they pay comparatively less attention to global obligations than to remedial extraterritorial obligations relating to states' acts and omissions; (2) they focus exclusively on obligations of states, though they claim to be applicable to IGOs as well,¹⁷ and, therefore, obligations of other NSAs and individuals are beyond their scope; (3) they bolster a state-centered view of global obligations, including global obligations to assist in the realization of socio-economic rights; (4) they do not specify a normative basis, nature, or status of global obligations; and (5) while

Rights Responsibility of International Assistance and Cooperation in Health, in UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS 104 (Mark Gibney & Sigrun Skogly eds., 2010).

¹³ See, for example, Philipp Dann, *Accountability in Development Aid Law: The World Bank, UNDP and Emerging Structures of Transnational Oversight*, 44 *Archiv des Völkerrechts* 381 (2006); MARGOT E. SALOMON, *GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS: WORLD POVERTY AND THE DEVELOPMENT OF INTERNATIONAL LAW* (2007) [hereinafter *GLOBAL RESPONSIBILITY*]; CASTING THE NET WIDER: HUMAN RIGHTS, DEVELOPMENT AND NEW DUTY-BEARERS (Margot E. Salomon et al. eds., 2007).

¹⁴ The Maastricht Principles are a non-binding international expert opinion, in the creation of which 40 prominent human rights scholars and practitioners took part in 2011. For a critique of the Maastricht Principles as a human rights instrument, see Ralph Wilde, *Dilemmas in Promoting Global Economic Justice through Human Rights Law*, in *THE FRONTIERS OF HUMAN RIGHTS: EXTRATERRITORIALITY AND ITS CHALLENGES* 127 (Nehal Bhuta ed., 2016).

¹⁵ See, for example, Olivier De Schutter et al., *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 34 *HUM. RTS. Q.* 1084 (2012); Margot E. Salomon & Ian Seiderman, *Human Rights Norms for a Globalized World: The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 3 *GLOB. POL'Y* 458 (2012); Fons Coomans, *Situating the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (Maastricht Faculty of Law, Working Paper, 2013).

¹⁶ See, for example, *Tilburg Guiding Principles on the World Bank, IMF and Human Rights*, in *WORLD BANK, IMF AND HUMAN RIGHTS* 247 (Willem van Genugten et al. eds., 2003) [hereinafter *Tilburg Guiding Principles*]; U.N. Office of the High Comm'r for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. HR/PUB/11/04 (2011) [hereinafter *U.N. Guiding Principles*]; Int'l Law Comm'n, *Draft Articles on Responsibility of International Organizations Adopted at its Sixty-Third Session*, U.N. Doc. A/66/10 (2011) [hereinafter *Draft Articles on International Organizations*].

¹⁷ ETO Consortium, *supra* note 7 (principle 16 of the Maastricht Principles).

interpreting global obligations as obligations of conduct, rather than obligations of result, they leave many issues surrounding their content and scope unclear.

The third period is represented by recent studies aimed at finding solutions to questions that the Maastricht Principles leave open (especially regarding the direct extraterritorial obligations of NSAs and IGOs), where global obligations are still given an insignificant place.¹⁸ Most contemporary studies concentrate on global obligations of conduct, that is, obligations to cooperate and assist,¹⁹ and in particular obligations to cooperate for sustainable development.²⁰ Global obligations of result—interactional obligations to realize socio-economic rights universally and institutional obligations to create and maintain a just global order—often fall outside the scope of these studies.²¹

This Article proposes ways to fill two major gaps in the field: the lack of a systematic legal conception, and the lack of a well-developed legal framework of various actors' global obligations. Its primary purposes are therefore: first, to justify global obligations in the area of socio-economic rights as human rights obligations of multiple actors; and second, to analyze their nature, status, types, content, and scope. It aims to clarify several important issues on which, as of yet, there is no agreement in the literature or in practice, including: the normative basis of global obligations (whether they are based on human rights or other demands for justice); their status (whether they are moral or legal obligations); their nature

¹⁸ See, for example, GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW (Malcolm Langford et al. eds., 2013); CHALLENGING TERRITORIALITY IN HUMAN RIGHTS LAW: FOUNDATIONAL PRINCIPLES FOR A MULTI DUTY-BEARER HUMAN RIGHTS REGIME (Wouter Vandenhoele ed., 2015); WILLEM VAN GENUGTEN, THE WORLD BANK GROUP, THE IMF AND HUMAN RIGHTS: A CONTEXTUALISED WAY FORWARD (2015); THE FRONTIERS OF HUMAN RIGHTS: EXTRATERRITORIALITY AND ITS CHALLENGES (Nehal Bhuta ed., 2016); DUTIES ACROSS BORDERS: ADVANCING HUMAN RIGHTS IN TRANSNATIONAL BUSINESS (Bård A. Andreassen & Võ Khánh Vinh eds., 2016); EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS FROM AN AFRICAN PERSPECTIVE (Lilian Chenwi & Takele Soboka Bulto eds., 2018).

¹⁹ See, for example, Margot E. Salomon, *Is There a Legal Duty to Address World Poverty?* (EUI Working Papers, Law 2012/03); Takhmina Karimova, *The Nature and Meaning of 'International Assistance and Cooperation' under the International Covenant on Economic, Social and Cultural Rights*, in ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW: CONTEMPORARY ISSUES AND CHALLENGES 163 (Eibe Riedel et al. eds. 2014); VANDENBOGAERDE, *supra* note 6.

²⁰ See, for example, PHILIPP DANN, THE LAW OF DEVELOPMENT COOPERATION: A COMPARATIVE ANALYSIS OF THE WORLD BANK, THE E.U. AND GERMANY (2013); MARKUS KALTENBORN, SOCIAL RIGHTS AND INTERNATIONAL DEVELOPMENT: GLOBAL LEGAL STANDARDS FOR THE POST-2015 DEVELOPMENT AGENDA (2015); TAHMINA KARIMOVA, HUMAN RIGHTS AND DEVELOPMENT IN INTERNATIONAL LAW (2016).

²¹ For an analysis of institutional global obligations, see, for example, Arne Vandenberg, *The Right to Development in International Human Rights Law: A Call for its Dissolution*, 31 NETH. Q. HUM. RTS. 187 (2013); Thomas Pogge & Mitu Sengupta, *Assessing the Sustainable Development Goals from a Human Rights Perspective*, 32 J. INT'L & COMP. SOC. POL'Y 83 (2016).

(whether they are obligations of conduct or obligations of result; interactional or institutional obligations; obligations of distributive or relational justice); their right-holders (individuals, societies, or states); and their duty-bearers (states, special institutions, IGOs, NSAs, individuals, or the international community as a whole). The specification of the exact content and scope of global obligations corresponding to certain socio-economic rights, as well as rules and methods of attributing them to particular categories of actors, goes beyond the scope of this Article and requires further careful research.

This Article applies a methodology that aspires to uncover the interrelations between philosophical discourse, normative legal order, and legal practice. Many distinguished moral, political, and legal philosophers from the two camps of statist (nationalists) and cosmopolitans, in debating the duties owed to non-compatriots (those living outside the borders of one's state), have taken several important steps on the path toward the justification of global obligations.²² These debates have promoted the recognition of global obligations in world politics, as well as their anchoring in core international hard and soft law instruments. The potential of philosophy in solving fundamental problems relating to global obligations, however, has been considerably underestimated and underexploited in legal theory and practice. This Article contributes to bridging the gap between philosophy and law by demonstrating how contemporary theories of global justice can further the justification, conceptualization, allocation, and implementation of global obligations. The Article translates philosophical ideas into the language of law and incorporates empirical findings relating to global obligations. At the same time, it explores whether human rights theory and practice regarding global obligations are capable of, and essential to, solving widely debated issues of global justice.

In this respect, the Article approaches the subject of global obligations from two sides. On the one hand, it defends a human-centered cosmopolitan conception of justice, which justifies and specifies our obligations towards non-compatriots, as a guideline for reforming the existing legal framework and institutional design relating to global obligations. On the other hand, it shows that these changes are also required by the fundamental norms and principles of international human rights law. In this sense, the Article consolidates so-called "ideal" and "conservative" aspects of justice.²³ It appeals to ideal justice by contending that philosophical justifications of what is "just" in the global domain

²² See Section II.B below.

²³ "Conservative" justice focuses on existing norms, institutions, and practices, whereas "ideal" justice calls for reforming such norms, institutions, and practices. See David Miller, *Justice*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2017), <http://perma.cc/5U2X-XNZ3>.

provide strong reasons for improving existing legal instruments, institutions, and practices in the sphere of human rights. However, it is also conservative in the sense that it proceeds from the assumption that improving the global order through the recognition and implementation of global obligations does not require creating *new* human rights entitlements, but rather guaranteeing the universal realization of human rights, in particular basic socio-economic rights, *already enshrined* in the International Bill of Human Rights.²⁴

This Article proceeds with Section II, which undertakes a normative analysis of duties towards non-compatriots as human rights obligations. Following it, Section III explores the extent to which extraterritorial duties should be acknowledged and implemented as shared human rights obligations of multiple actors. Section IV broadly outlines a concept of global human rights obligations and analyzes what global obligations should be realized in the domains of relational and distributive justice. Finally, Section V offers a general conclusion.

II. OBLIGATIONS TOWARDS NON-COMPATRIOTS

The dominant historical and contemporary view is that states should respect, protect, and fulfill the socio-economic rights solely of their own citizens and residents.²⁵ This Section demonstrates that this position is highly questionable and underpins states' human rights obligations towards individuals beyond their borders.²⁶ It starts with an examination of human-centricity and its main elements, which are recognized in the Universal Declaration of Human Rights (UDHR) and which serve as justifying bases for global obligations (Section II.A). Next, this Section explains why and to what extent the concept of global obligations proposed in this Article is inspired by cosmopolitan intuitions, and what statist ideas it incorporates (Section II.B). Then, it offers the foundation of the particular conception of cosmopolitanism to be developed in this Article (Section II.C). This Section concludes by conceptualizing global obligations as human rights obligations (Section II.D).

²⁴ The International Bill of Human Rights is traditionally considered to include the UDHR, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Optional Protocols to both Covenants. *See* OHCHR, *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*, <http://perma.cc/937L-RU86>.

²⁵ *See* ETO Consortium, *supra* note 7, at 3; ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 1 (2006).

²⁶ Extraterritorial obligations of major global actors (IGOs, NSAs and individuals) are discussed in Section III.B.

A. Individual as the Ultimate Unit of Moral and Legal Concern

The UDHR proclaims that “[a]ll human beings are born free and equal in dignity and rights.”²⁷ This internationally-recognized norm contains several important elements. First, each person is a bearer of inalienable dignity and human rights, or, in other words, possesses a *special moral and legal status*. Second, individuals are equal in a certain fundamental sense, as holders of dignity and human rights, and should be treated and regarded as equals (*basic equality*). Third, dignity and human rights belong to a person as a member of a human society and not because of their special political connection with any state (*membership in humanity*). All three principles are interdependent and presuppose one another. They underlie an idea of human-centricity that sees an individual as the ultimate unit of both moral and legal concern,²⁸ an absolute value and supreme goal of social, legal, political, and economic development at both local and global levels.²⁹

The organization of the contemporary global order, marked by extreme poverty and inequality, fails to fulfill the idea of human-centricity that is embodied in the UDHR in three interrelated ways.

First, approximately 800 million people worldwide suffer from preventable extreme poverty. Poverty is the cause of the death of one child every five seconds and generally of every third person on the planet.³⁰ This situation is incompatible with a *special moral and legal status* of a person as a possessor of human dignity and human rights. Extreme poverty is characterized by individuals’ severe material

²⁷ UDHR, *supra* note 2, at art. 1. Being a key document signed by all member states of the U.N., the UDHR embodies a universal political agreement on fundamental human rights (see Section II.D below) and is considered to form an essential part of customary international law (see Section III.B below). *Cf.* International Covenant on Civil and Political Rights, pmbl., Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, pmbl., Jan. 3, 1976, 993 U.N.T.S. 3 [hereinafter ICESCR].

²⁸ The term an “ultimate unit of moral concern” is used by political philosophers Thomas Pogge and Kok-Chor Tan. See Thomas W. Pogge, *Cosmopolitanism and Sovereignty*, 103 ETHICS 48, 48–49 (1992); KOK-CHOR TAN, JUSTICE WITHOUT BORDERS: COSMOPOLITANISM, NATIONALISM, AND PATRIOTISM 1 (2004). I focus not just on the moral, but also on the legal status of a person. See also Anne Peters, *Membership in the Global Constitutional Community*, in JAN KLABBERS ET AL., THE CONSTITUTIONALIZATION OF INTERNATIONAL LAW 153, 155 (2009).

²⁹ The principle of human-centricity is compatible with the acknowledgement of value of the other species.

³⁰ See MARCUS MANUEL ET AL., FINANCING THE END OF EXTREME POVERTY 9 (2018), <http://perma.cc/W6WK-PCNK>; Pogge & Sengupta, *supra* note 21, at 86. According to UNICEF, in 2018, 6.2 million children under 15 years, out of which 5.3 million children under five, died mostly from preventable or treatable poverty-related causes. See UNICEF, *Levels and Trends in Child Mortality* (2019), <http://perma.cc/QMS9-ANS8>.

deprivation, social exclusion, powerlessness, marginalization, and stigmatization. In the Author's view, one of the most essential and tragic hallmarks of poverty, which contradicts human-centricity, is the feelings of indignity, worthlessness, and "nobodyness" experienced by the poor. Catholic priest and lifelong advocate for the poor, Fr. Joseph Wresinski succeeded in expressing these feelings:

For the very poor tell us over and over again that man's greatest misfortune is not to be hungry or unable to read, nor even to be without work. *The greatest misfortune of all is to know that you count for nothing, to the point where even your suffering is ignored.* The worst blow of all is the contempt on the part of your fellow citizens. For it is that contempt which stands between a human being and his rights. It makes the world disdain what you are going through and prevents you from being recognized as worthy and capable of taking on responsibility. *The greatest misfortune of extreme poverty is that for your entire existence you are like someone already dead.*³¹

Second, world poverty and extreme inequality³² are inconsistent with *basic equality* between individuals because they divide people into first-class and second-class humans. In the words of contemporary legal philosopher Jeremy Waldron, basic equality proceeds from the assumption that "fundamentally there is just one sort of human being, just one rank of humanity."³³ In today's world, individuals' place of birth, residence, and their special political ties with the state strongly shape not only their enjoyment of basic rights but *all* their life prospects.³⁴ As economist Branko Milanovic argues, we can distinguish between a "citizenship premium," held by those born in the "right" countries, and a "citizenship penalty" imposed on those born in the "wrong" places.³⁵

It is a commonly-held belief that only few contemporary political cultures deny the equality of people as humans.³⁶ The current global institutional structure, however, stands in stark contradiction with such an optimistic view. Rather than expressing respect for human dignity and human rights,³⁷ that structure reinforces

³¹ Joseph Wresinski, *The Very Poor, Living Proof of the Indivisibility of Human Rights*, in *EXTREME POVERTY AND HUMAN RIGHTS: ESSAYS ON JOSEPH WRESINSKI* 20 (Quentin Wodon ed., 2000) (emphasis added).

³² According to Oxfam, in 2018, 26 people had the same wealth as the poorest half of humanity (3.8 billion people living under \$5.50 per day). See MAX LAWSON ET AL., *PUBLIC GOOD OR PRIVATE WEALTH?* 12 (2019), <http://perma.cc/A8QT-9JCB>. The poor's share in global income amounts to only about 2 percent. See Pogge & Sengupta, *supra* note 21, at 86.

³³ JEREMY WALDRON, *ONE ANOTHER'S EQUALS: THE BASIS OF HUMAN EQUALITY* 6 (2017).

³⁴ See TAN, *supra* note 28, at 28.

³⁵ BRANKO MILANOVIC, *GLOBAL INEQUALITY: A NEW APPROACH FOR THE AGE OF GLOBALIZATION* 131 (2016).

³⁶ See, for example, WALDRON, *supra* note 33, at 7 (noting that modern differences in "sortal status" that "categorize[] legal subjects on the basis of the sort of person they are" are difficult to find).

³⁷ See JOHN RAWLS, *A THEORY OF JUSTICE* 386 (rev. ed. 1999).

the norms and practices infringing them. The unjust international order, like many national orders, results in branding the poor as a different kind of human being and internalizing the feelings of such stigma in the impoverished themselves.³⁸ The extraterritorial actions and policies of developed states, including their development assistance programs, are often based on standards that citizens of these states would never agree to apply domestically.

Third, in the modern state-centered world, the enjoyment of human dignity and human rights depends on the state's ability and desire to guarantee it for its citizens and residents. In cases of arbitrariness, inaction, or weakness of state authorities, individuals cannot exercise these fundamental entitlements associated with their *membership in humanity*. In such cases, the enjoyment of human dignity and human rights is possible only if appropriate arrangements are made at the supranational level. Membership in humanity gives rise to the right to a just global order in which human dignity and human rights are ensured. Those individuals whose human rights are ignored or violated by their state should be able to claim their realization through joint efforts by the members of the international community.

This idea resonates with the conception of the “right to have rights” advanced by political philosopher Hannah Arendt. According to one of her interpretations of this right, it is the “right of every individual to belong to humanity” that is to be guaranteed by humanity itself.³⁹ As contemporary political thinker Seyla Benhabib elaborates, humanity is “the addressee of the claim that one ‘should be acknowledged as a member [of],’” and receive protection from, human society.⁴⁰ Building on the analysis of Arendt and Benhabib, we can conclude that humanity as a whole is bound by an obligation to construct global institutions through which human rights associated with membership in humanity may be realized. Translating this philosophical proposition into the language of law, the right to have rights can be interpreted as the entitlement to a just global order expressed in Article 28 of the UDHR.⁴¹

In this respect, global obligations represent a significant tool for the realization of individuals' essential entitlements to their special moral and legal

³⁸ See, for example, ROBERT WALKER, *THE SHAME OF POVERTY* (2014); *POVERTY AND SHAME: GLOBAL EXPERIENCES* (Elaine Chase & Grace Bantebya-Kyomuhendo eds., 2014); *THE SHAME OF IT: GLOBAL PERSPECTIVES ON ANTI-POVERTY POLICY* (Erika K. Gubrium et al. eds., 2013).

³⁹ HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 298 (rev. ed. 1968).

⁴⁰ SEYLA BENHABIB, *THE RIGHTS OF OTHERS: ALIENS, RESIDENTS, AND CITIZENS* 58 (2004); see also ALISON KESBY, *THE RIGHT TO HAVE RIGHTS: CITIZENSHIP, HUMANITY, AND INTERNATIONAL LAW* (2012).

⁴¹ The UDHR entitles all individuals “to a social and international order in which the rights and freedoms set forth in [the UDHR] can be fully realized.” UDHR, *supra* note 2, at art. 28. See Section IV.A below.

status, basic equality, and membership in humanity and to the elimination of the main obstacles to the enjoyment of these entitlements, namely poverty and extreme inequality.

B. Why Cosmopolitanism?

For more than half a century, issues surrounding negative and positive duties towards non-compatriots have been at the center of intensive philosophical debates between statists arguing for inter-state justice⁴² and cosmopolitans pleading for global justice.⁴³ The modern versions of statism and cosmopolitanism provide a wide range of interpretations of moral, political, and legal dimensions of global obligations. Despite their discrepancies, however, these approaches are not strictly polar.⁴⁴ Advocates of *both* approaches recognize certain duties towards non-compatriots. Their differences arise from their understandings of the normative basis, nature, status, conditions, content, and scope of these duties.⁴⁵

While the concept of global obligations developed in this Article is guided predominantly by cosmopolitan ideas, some statist arguments are also taken into consideration. The primary reasons why this Article elaborates a cosmopolitan approach to global obligations are discussed below.

First, this Article proceeds from a cosmopolitan assumption of the *possibility of arriving at a universal concept of justice* that expresses *a global political consensus between*

⁴² See, for example, MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY (1983) [hereinafter SPHERES OF JUSTICE]; MICHAEL WALZER, THICK AND THIN: MORAL ARGUMENT AT HOME AND ABROAD (1994) [hereinafter THICK AND THIN]; WILL KYMLICKA, POLITICS IN THE VERNACULAR: NATIONALISM, MULTICULTURALISM, AND CITIZENSHIP (2001); Robert E. Goodin, *What Is So Special About Our Fellow Countrymen?*, 98 ETHICS 663 (1988); Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFF. 113 (2005); RICHARD MILLER, GLOBALIZING JUSTICE: THE ETHICS OF POVERTY AND POWER (2010).

⁴³ See, for example, Peter Singer, *Famine, Affluence, and Morality*, 1 PHIL. & PUB. AFF. 229 (1972); PETER UNGER, LIVING HIGH AND LETTING DIE: OUR ILLUSION OF INNOCENCE (1996); HENRY SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY (2d ed. 1996); CHARLES R. BEITZ, POLITICAL THEORY AND INTERNATIONAL RELATIONS (rev. ed. 1999); SIMON CANEY, JUSTICE BEYOND BORDERS: A GLOBAL POLITICAL THEORY (2005); MARTHA C. NUSSBAUM, FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP (2006); THOMAS POGGE, WORLD POVERTY AND HUMAN RIGHTS: COSMOPOLITAN RESPONSIBILITIES AND REFORMS (2d ed. 2008) [hereinafter WORLD POVERTY]; THOMAS POGGE, POLITICS AS USUAL: WHAT LIES BEHIND THE PRO-POOR RHETORIC (2010) [hereinafter POLITICS]; TAN, *supra* note 28; Richard J. Arneson, *What Do We Owe to Distant Needy Strangers?*, in PETER SINGER UNDER FIRE: THE MORAL ICONOCLAST FACES HIS CRITICS (Jeffrey Schaler ed., 2009).

⁴⁴ For the possibility of convergence of nationalism and cosmopolitanism, see TAN, *supra* note 28, at 85–106; Rainer Forst, *Towards a Critical Theory of Transnational Justice*, 32 METAPHILOSOPHY 161 (2001).

⁴⁵ Forst, Tan and Caney provide an excellent overview of the main arguments of statism and cosmopolitanism. See Forst, *supra* note 44, at 160–65; TAN, *supra* note 28, at 85; CANEY, *supra* note 43, at 1–15.

people sharing various views on justice.⁴⁶ In a multicultural world, the concept of global justice should be the result of an overlapping consensus, which is reached politically, that is, independently from any comprehensive (ideological, philosophical, religious, and cultural) doctrines.⁴⁷ This approach within an overlapping consensus, or an ethical minimum, theory is called *justificatory minimalism*. In contrast to *substantive minimalism*, it seeks not an intersection of various values, but a practical convergence as a basis for universal rules.⁴⁸

Internationally-recognized human rights best confirm the correctness of cosmopolitan intuitions regarding not only the possibility, but also the existence, of a universal normative basis for global justice.⁴⁹ This Article develops the idea of human rights as a product of an overlapping consensus and a foundation for a political conception of global justice; and on this basis, elaborates a human rights-based version of cosmopolitanism. Human rights represent “globally uniform minimum standards for the treatment [of individuals]”⁵⁰ by states, other global actors, and the international community as a whole. It is important to add that the results of this political consensus are not only human rights themselves, but also essential underlying principles of human rights law (such as the principle of human-centricity embodied in Article 1 of the UDHR).

⁴⁶ Cf. statist’s arguments that a national affinity—a common understanding of what is just shared by members of a community—is an important precondition for relations of justice. From their perspective, an autonomous, full-blooded concept of global justice is impossible, since it always has a local root system that feeds it. See THICK AND THIN, *supra* note 42, at 4.

⁴⁷ The concept of an “overlapping consensus” was developed by a political philosopher John Rawls. See John Rawls, *The Idea of an Overlapping Consensus*, 7 OXFORD J. LEGAL STUD. 1, 7–8 (1987); John Rawls, *Justice as Fairness: Political not Metaphysical*, 14 PHIL. & PUB. AFF. 247 (1985); John Rawls, *The Domain of the Political and Overlapping Consensus*, in DEBATES IN CONTEMPORARY POLITICAL PHILOSOPHY: AN ANTHOLOGY 160 (Derek Matravers & Jon Pike eds., 2003).

⁴⁸ On justificatory and substantive minimalism, see Joshua Cohen, *Minimalism About Human Rights: The Most We Can Hope For?*, 12 J. POL. PHIL. 190, 192 (2004); DAVID MILLER, NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE 172 (2007) [hereinafter RESPONSIBILITY]; Charles R. Beitz, *Human Rights as a Common Concern*, 95 AM. POL. SCI. REV. 269 (2001); Charles Taylor, *Conditions of an Unforced Consensus on Human Rights*, in THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS 124 (Joanne R. Bauer & Daniel A. Bell eds., 1999); MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH 5–6 (2000).

⁴⁹ For instance, a philosopher and a member of the French National Commission of UNESCO involved in the discussion of the UDHR’s draft, Jacques Maritain, maintained that the Declaration was a product of a political agreement between “proponents of violently opposed ideologies”: “Yes, they replied, we agreed on these rights, providing we are not asked why. With the ‘why’, the dispute begins.” Jacques Maritain, *Introduction*, in UNESCO, HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS 9 (1950); JACQUES MARITAIN, MAN AND THE STATE 76–77 (1951). For an analysis of Maritain’s human rights conception, see Elena Pribytkova, *Natural Law and Natural Rights According to Vladimir Solovyov and Jacques Maritain*, in ORTHODOX CHRISTIANITY AND HUMAN RIGHTS 69 (Alfons Brüning & Evert van der Zweerde eds., 2012).

⁵⁰ POLITICS, *supra* note 43, at 10.

Second, as opposed to statist approaches, which favor the development of *international justice* treating states as the key agents in the global arena, the cosmopolitan conception deployed in this Article concentrates on *global justice*, maintaining that *persons* are major subjects and right-holders.⁵¹ This Article argues that principles of global justice should penetrate states' borders and directly regulate relations of individuals with multiple global actors.⁵²

The conflict between statist and cosmopolitan attitudes is reflected in the dualism of contemporary international law. While public international law regulating inter-state relations proceeds from statist assumptions, international human rights law focusing on entitlements of individuals is based on cosmopolitan ideas. Drawing inspiration from cosmopolitanism, this Article contends that taking human rights seriously necessarily entails a shift from a state-centered to a human-centered approach, and from international justice to global justice. At the same time, this Article gives consideration to statist arguments that the state should remain an important actor in the international community and a defender of the human rights and fundamental interests of its people.

Third, proponents of statism assert that *relations of justice* presuppose a well-established and institutionalized social cooperation that the contemporary international order lacks.⁵³ I agree with cosmopolitan theorists, who, relying in part on convincing empirical evidence of intensive present-day global cooperation among various actors, conclude that we already have a certain global institutional scheme.⁵⁴ This scheme is considerably less developed than national or regional schemes, is extremely unfair, and infringes human dignity and human rights. However, this imbalance between national and global institutional structures further supports the cosmopolitan prescription that a global structure should be improved.⁵⁵ As this Article elaborates, individuals' entitlement to membership in humanity gives rise to the right to a just global order, which binds all members of the international community to a shared obligation to create and maintain fair global institutions. Principles of justice are therefore to be applied universally and

⁵¹ Thomas Pogge identifies three main features of cosmopolitanism: all persons are equally considered (universality) to be the ultimate units of moral concern (individualism) for everyone in the world (generality). See Pogge, *supra* note 28, at 48–49.

⁵² Statist approaches propose that the operation of the principles of international justice governing relations between states apply only across the borders of sovereign states, while the relationship between individuals falls exclusively within the ambit of national social justice. See RAWLS, *supra* note 37, at 6–7; JOHN RAWLS, *THE LAW OF PEOPLE* 119–20 (1999).

⁵³ See Nagel, *supra* note 42, at 113–14, 121–22.

⁵⁴ See, for example, Forst, *supra* note 44, at 163; BEITZ, *supra* note 43, at 143–44; POLITICS, *supra* note 43, at 10–25; TAN, *supra* note 28, at 27–28.

⁵⁵ See Henry Shue, *Mediating Duties*, 98 *ETHICS* 687 (1988).

to correct global injustice to the same degree that they (should) apply and correct local injustice.⁵⁶

Fourth, this Article advocates for the cosmopolitan view that *global principles of justice can serve as instruments for improving institutions and practices both domestically and worldwide*.⁵⁷ Acting separately and jointly through their participation in IGOs, as well as by regulating and influencing the conduct of NSAs and individuals, states represent their people. Individuals have justified interests in their states not infringing upon the human dignity and human rights of people abroad, and share obligations to prevent these infringements.⁵⁸ Thus, states' implementation of global obligations pertaining to human rights is on behalf of and in the justified interests of the people they represent. Since a just national order does not guarantee a non-violation of human rights extraterritorially,⁵⁹ territorial human rights obligations should be supplemented by extraterritorial ones, while national norms, institutions, and practices should be brought into accord with principles of global justice.⁶⁰

Fifth, like other supporters of cosmopolitanism, I consider the guarantees of *a decent social minimum to be at the core of social and global justice* and to require the *realization of basic socio-economic rights universally*.⁶¹ This Article argues that the capacity to be a holder of fundamental socio-economic rights is not connected with membership in any society except the human one.⁶² Relatedly, based on

⁵⁶ BEITZ, *supra* note 43, at 143–53; Thomas Pogge, *Rawls and Global Justice*, 18 CANADIAN JOURNAL OF PHILOSOPHY 227, 243 (1988); TAN, *supra* note 28, at 28; Forst, *supra* note 44, at 165.

⁵⁷ Statists view demands of global justice rather as a threat to domestic relations of social justice, and positive duties towards non-compatriots are seen as contradicting the fundamental interests of compatriots, especially those relating to the enjoyment of socio-economic rights. See Nagel, *supra* note 42, at 131–32.

⁵⁸ Political philosopher Henry Shue is persuasive in his insistence that a government that violates human rights of people abroad is “failing in its duties both to the victims of the deprivation and, as an agent with service duties, to its own population.” SHUE, *supra* note 43, at 152.

⁵⁹ See Forst, *supra* note 44, at 173.

⁶⁰ SHUE, *supra* note 43, at 131. The improvement of local norms, institutions, and practices required by global justice includes, for example, institutionalizing human rights impact assessments (HRIAs) and human rights due diligence (HRDD) and implementing them with regard to all projects and policies which might affect the enjoyment of human rights abroad; creating accountability mechanisms to guarantee the right to remedies to those suffering from extraterritorial human rights violations; and accumulating means for global assistance.

⁶¹ I disagree with proponents of statism, who believe that special relations within a particular society are a key condition for exercising socio-economic rights. See, for example, Nagel, *supra* note 42, at 127, 131–32.

⁶² Advocates of cosmopolitanism argue that it is necessary to distinguish between fundamental ties that bind all of mankind and complementary bonds between members of certain communities. See Johann Frick, *National Partiality, Immigration, and the Problem of Double-Jeopardy* 4–5, <http://perma.cc/K829-9N6F>. Being a product of global political consensus, basic socio-economic

cosmopolitan intuitions, international human rights law also recognizes that, unlike political rights (the implementation of which should be ensured by the state within its jurisdiction), the enjoyment of basic socio-economic rights is not conditioned on political bonds between an individual and the state.⁶³ In many contexts, territorial and extraterritorial obligations corresponding to basic socio-economic rights are simultaneous and equal in their content and scope.⁶⁴ In some situations, however, as proponents of statism rightly assert, global obligations are limited in scope, and are conditional and secondary in comparison to territorial ones.⁶⁵

Thus, cosmopolitan ideas—that (1) human rights, as a result of a universal overlapping consensus, (2) underlie a political concept of global justice and (3) require shifting from a state-centered to human-centered global order, and (4) supplementing and harmonizing principles and institutions of domestic justice with those of global justice and territorial obligations with extraterritorial ones—ground the idea that states are bound by global human rights obligations. At the same time, some statist arguments—on (1) the significant role of the state in the realization of human rights and corresponding obligations; (2) the necessity of institutionalized social cooperation for relations of justice; and (3) the limits of some global obligations in comparison to territorial ones—remain relevant for conceptualizing states’ global obligations.

C. What Cosmopolitanism?

As the previous Section demonstrated, the justification of global obligations relies predominantly on a cosmopolitan interpretation of justice. This Section will briefly outline special features of the cosmopolitan conception, which this Article elaborates and upon which a convincing understanding of global obligations can be based.

First, this Article develops a *cosmopolitan approach to global justice*, which is concerned with the role of compatriot ties for determining the content and scope

rights represent, in Shue’s apt words, “everyone’s minimum reasonable demands upon the rest of humanity. They are the rational basis for justified demands the denial of which no self-respecting person can reasonably be expected to accept.” SHUE, *supra* note 43, at 19.

⁶³ While the ICCPR contains jurisdiction clauses, the ICESCR does not have these limitations. *See* ICCPR, *supra* note 27, at art. 2(1); ICESCR, *supra* note 27, at art. 2(1).

⁶⁴ Some cosmopolitans believe that obligations towards fellow countrymen and foreigners are identical. *See, for example*, Singer, *supra* note 43; UNGER, *supra* note 43. Pogge demonstrates that under certain conditions, remedial extraterritorial obligations may prevail over national obligations. *See* WORLD POVERTY, *supra* note 43, at 124–51.

⁶⁵ See Section IV.A below.

of global obligations aimed at promoting social justice universally.⁶⁶

Second, it proposes a *human rights-based cosmopolitan conception*⁶⁷ of global justice and justifies global obligations as human rights obligations of multiple actors. By their nature, human rights are cosmopolitan demands that proceed from the assumption that a person is the ultimate unit of moral and legal concern and a major subject of justice.

Third, this Article argues that global obligations are moral obligations that should receive *legal* recognition and implementation at international, regional, and national levels. Thus, it explicates a type of *legal cosmopolitanism*.⁶⁸

Fourth, it underscores the close *interrelation between interactional cosmopolitanism*⁶⁹ (which formulates ethical principles directly regulating the conduct of global actors) and *institutional cosmopolitanism* (which postulates principles of justice that apply to a global institutional structure).⁷⁰ This Article defends the thesis that

⁶⁶ For classification of cosmopolitanism as a “doctrine about justice” and a “doctrine about culture,” see, for example, SAMUEL SCHEFFLER, *BOUNDARIES AND ALLEGIANCES: PROBLEMS OF JUSTICE AND RESPONSIBILITY IN LIBERAL THOUGHT* 111 (2001); TAN, *supra* note 28, at 11. An analysis of cultural cosmopolitanism, which focuses on the relevance of cultural ties for individuals’ identity, falls beyond the scope of this Article.

⁶⁷ Various human rights-based cosmopolitan approaches are developed in SHUE, *supra* note 43; WORLD POVERTY, *supra* note 43; CANEY, *supra* note 43. For other normative grounds—in capabilities-based (Amartya Sen & Martha Nussbaum), needs-based (David Miller), utilitarian (Peter Singer), contractarian (Charles Beitz & Darrel Moellendorf) approaches—see Singer, *supra* note 43; Amartya Sen, *Justice Across Borders*, in *GLOBAL JUSTICE AND TRANSNATIONAL POLITICS: ESSAYS ON THE MORAL AND POLITICAL CHALLENGES OF GLOBALIZATION* 37 (Pablo de Greiff & Ciaran Cronin eds., 2002); NUSSBAUM, *supra* note 48; RESPONSIBILITY, *supra* note 48; Beitz, *supra* note 48; DARREL MOELLENDORF, *COSMOPOLITAN JUSTICE* (2002). For an analysis of various cosmopolitan approaches, see Gillian Brock, *Contemporary Cosmopolitanism: Some Current Issues*, 8 PHIL. COMPASS 689, 690–91 (2013); CANEY, *supra* note 43, at 3–7; TAN, *supra* note 28, at 93–98.

⁶⁸ See Section II.D below. My interpretation of legal cosmopolitanism differs from the canonical one suggested by Charles Beitz and Thomas Pogge who differentiate between moral cosmopolitanism (that concerns moral relations between individuals) and institutional, or legal, cosmopolitanism (that calls for a universal citizenship in a world state). See BEITZ, *supra* note 43, at 287; Pogge, *supra* note 28, at 49; TAN, *supra* note 28, at 10. Beitz’ and Pogge’s use of the terms “institutional” or “legal” cosmopolitanism suggests that legal regulation and institutionalization of global obligations must invariably be connected with a world state. This understanding follows from a state-centered vision of human rights and is incompatible with human-centered and polycentric approaches developed in this Article. As this Section will show, legal cosmopolitanism does not presuppose the creation of a world state. See Cristina Lafont, *Accountability and Global Governance: Challenging the State-Centric Conception of Human Rights*, 3 ETHICS & GLOBAL POLITICS 193, 198–99 (2010).

⁶⁹ For various interactional conceptions of human rights, see SHUE, *supra* note 43; CANEY, *supra* note 43; John Tasioulas, *The Moral Reality of Human Rights*, in *FREEDOM FROM POVERTY AS A HUMAN RIGHT: WHO OWES WHAT TO THE VERY POOR?* 75 (Thomas Pogge ed., 2007); JAMES GRIFFIN, *ON HUMAN RIGHTS* (2008).

⁷⁰ Different versions of institutional approach are represented in WORLD POVERTY, *supra* note 43; POLITICS, *supra* note 43; BEITZ, *supra* note 43; TAN, *supra* note 28; Mathias Risse, *How Does the Global Order Harm the Poor?*, 33 PHIL. & PUB. AFF. 349 (2005); MOELLENDORF, *supra* note 67.

global obligations include both interactional duties of ethics and institutional duties of justice.⁷¹ The realization of socio-economic rights universally requires a just global institutional scheme. The creation and maintenance of this institutional scheme, in turn, is hardly possible without the implementation of human rights obligations by global actors in specific extraterritorial relations. On this premise, the position defended in this Article differs from traditional approaches in two important aspects: (1) whereas obligations to create a just institutional scheme are often interpreted as duties of distributive justice,⁷² I consider a fair global institutional structure to be aimed, in the first place, at guaranteeing basic equality that has both relational and distributive implications;⁷³ (2) though institutional and interactional obligations are frequently treated as moral cosmopolitan duties,⁷⁴ I elaborate on their legal conception.

Fifth, this Article develops a *weak, or sufficientist, cosmopolitan conception of relational and distributive justice*.⁷⁵ It demonstrates that global obligations are aimed not at eliminating inequality between persons worldwide, but at ensuring certain minimum relational and distributive guarantees that are sufficient for the enjoyment of basic equality. In this respect, individuals should be empowered to participate fully in all core global institutions and practices, including essential decision-making processes, and have secure access to a global social minimum.

Sixth, this Article proceeds from the assumption that *a world state*⁷⁶ is neither

⁷¹ The difference between duties of global ethics and duties of global justice is easier to understand through the following criteria: (1) when global ethics regulates interpersonal (interactional) relations between various individual and collective actors, global justice focuses on global institutional structure; (2) while ethical claims are direct claims against other actors, demands of justice are addressed first against social and political institutions and, indirectly, against agents contributing to these institutions' functioning; (3) while duties of ethics are usually "limited-term commitments with a definable goal" (for instance, disaster relief or international assistance in times of emergency), duties of justice are systematic and ongoing commitments (for example, combating poverty and extreme inequality). TAN, *supra* note 28, at 21–23. It is important to note that not only moral but also legal human rights obligations belong to domains of ethics and justice.

⁷² BEITZ, *supra* note 43, at 125; WORLD POVERTY, *supra* note 43, at 43–45; TAN, *supra* note 28, at 19.

⁷³ See Sections IV.B–IV.D below.

⁷⁴ Pogge, *supra* note 28, at 49.

⁷⁵ See Sections IV.B–IV.D below. The principle of sufficiency is explicated in Section IV.D.

⁷⁶ The possibility of global institutional order, for which cosmopolitans call, to transform into a world state causes concern among supporters of both nationalism and cosmopolitanism. See Nagel, *supra* note 42, at 115; Forst, *supra* note 44, at 162. According to Arendt, the creation of a world state would mean the end of world politics. See HANNAH ARENDT, MEN IN DARK TIMES 82 (1968). For cosmopolitan arguments against a world state, see Pogge, *supra* note 28, at 63; TAN, *supra* note 28, at 93–96; Lafont, *supra* note 68, at 194; CRISTINA LAFONT, *Challenging the State-Centric Conception of Human Rights without Endorsing the Ideal of a World State*, in GLOBAL GOVERNANCE AND HUMAN RIGHTS 45 (2012); Rafael Domingo, *The New Global Human Community*, 12 CHI. J. INT'L L. 563, 567, 583 (2012).

necessary nor possible in the global political domain. On the one hand, this Article considers that the enjoyment of rights associated with individuals' membership in a particular state is essential and should be guaranteed to them. On the other hand, it calls for a *polycentric global institutional structure established through cooperation among autonomous members of the international community*, including sovereign states.⁷⁷ This requires increasing the role of IGOs, NSAs (including international NGOs and transnational corporations (TNCs)), and individuals in the universal realization of basic socio-economic rights, while also increasing the human rights accountability of these actors. In this context, traditional state-centered governance and accountability modes should be harmonized with alternative, informal, and non-bureaucratic institutional solutions.⁷⁸ In combination with the acknowledgement of individuals as major subjects of justice, this will lead to the state losing its monopoly in the international arena and promote a shift from a state-centered to a human-centered global institutional order.

In sum, this Article develops a cosmopolitan conception of justice that advocates for both interactional and institutional global human rights obligations and justifies the necessity for their legal recognition, regulation, and implementation within the polycentric global community of multiple autonomous actors.

D. Towards a Human Rights-Based Cosmopolitanism

This Section explains why the recognition of global obligations as human rights obligations is essential. Human rights are often defined as legitimate entitlements that individuals have against relevant others.⁷⁹ Human rights have several important features. They are (1) universal, (2) high-priority entitlements, that (3) call for legal recognition, (4) give rise to corresponding obligations of certain actors, and (5) are grounds for taking international actions against those actors. In addition, human rights have both interactional and institutional aspects: they are claims on “the behavior of individual and collective agents, and on the design of social arrangements.”⁸⁰ These characteristics of human rights are key to understanding the nature of human rights-based global obligations.

⁷⁷ For a large diapason of possible organizational forms of the global order, see Michael Walzer, *Governing the Globe: What Is the Best We Can Do?*, DISSENT MAGAZINE (2000), <http://perma.cc/RM4G-J865>.

⁷⁸ See Elena Pribytkova, *Global Human Rights Obligations Relating to a Decent Standard of Living* 202–17 (2019) (J.S.D. dissertation, Columbia University).

⁷⁹ See, for example, SHUE, *supra* note 43, at 13; JAMES W. NICKEL, *MAKING SENSE OF HUMAN RIGHTS: PHILOSOPHICAL REFLECTIONS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 13–15 (2d ed. 2007); JEFF KING, *JUDGING SOCIAL RIGHTS* 20–21 (2012).

⁸⁰ UNDP, *HUMAN DEVELOPMENT REPORT* 25 (2000). See also Section II.C above.

First, there are lively debates about how we should understand the *universality of human rights*. Article 1 of the UDHR reflects a political consensus not only on the principle that all people are bearers of human rights, but also that they possess these rights because they belong to the human race. This idea underlies the principle of universality of human rights. Nevertheless, the principle itself and its traditional understanding are often criticized.⁸¹ For instance, contemporary legal philosopher Joseph Raz opposes the interpretation of universality, according to which human rights belong to people by virtue of their humanity alone. He claims that human rights are not diachronically, but rather synchronically, universal. In other words, they are the rights that “all people *living today* have.”⁸² Rightly noting that people have not possessed human rights at all times, Raz considers the existence of human rights to be dependent on social, economic, and cultural factors.⁸³ One can hardly agree with this account. If the presence of favorable socio-economic conditions is essential for the existence of human rights, it would be incorrect to speak about the synchronic universality of human rights. Many poor states do not enjoy the “common conditions of life” necessary for the (full) realization of human rights. Nevertheless, these states have recognized human rights, because (for various reasons) they believe that these minimum normative standards should serve as universal regulative guidelines, and thereby have expressed their intention to undertake all efforts for their realization independently and in cooperation with (members of) the international community. In this respect, human rights and corresponding (global) obligations exist where a universal political consensus about them is achieved and they govern the behavior of multiple actors. We deal with moral or legal human rights depending on whether this overlapping consensus is reached only in global political discourse or expressed in various legal sources (such as international human rights instruments, customary international law, and *jus cogens*) as well.

Second, being a result of a universal political agreement regarding the most important entitlements of a person, *human rights represent high-priority claims of individuals* that surpass many other interests and entitlements. According to legal philosopher Ronald Dworkin’s famous definition, human rights are “political trumps held by individuals.”⁸⁴ It is also important to point out the tradition of

⁸¹ See, for example, Chris Brown, *Universal Human Rights: A Critique*, in HUMAN RIGHTS IN GLOBAL POLITICS 103 (Tim Dunne & Nicholas J. Wheeler eds., 1999).

⁸² Joseph Raz, *Human Rights in the Emerging World Order*, 1 TRANSNAT’L LEGAL THEORY 31, 43 (2010) (emphasis added).

⁸³ Therefore, people from other epochs (for instance, the Stone Age or Ancient Rome) that lived in other socio-economic conditions did not possess human rights. *Id.*

⁸⁴ RONALD DWORKIN, TAKING RIGHTS SERIOUSLY xi (1977). For critique, see Joseph Raz, *Professor Dworkin’s Theory of Rights*, 26 POL. STUD. 123 (1978); András Sajó, *Socioeconomic Rights and the International Economic Order*, 35 N.Y.U. J. INT’L L. & POL. 221, 223–24 (2002).

distinguishing basic rights—human rights that, as observed by Shue, “need to be established securely before other rights can be secured.”⁸⁵ Basic human rights give rise to priority obligations of multiple actors and constitute a decent social minimum, which should be ensured universally.

Third, human rights and corresponding obligations are ‘citizens’ of two worlds: moral and legal.⁸⁶ This Article develops Raz’s persuasive argument that human rights are “moral rights that call for legal-political protection.” They are moral rights in the sense that their existence is independent of legal recognition; but at the same time, for their enforcement, they require and have the capacity to receive legal recognition and institutionalization.⁸⁷ Since there is still no agreement on whether global obligations should be interpreted as moral or legal obligations,⁸⁸ this Article pursues the double goal of: (1) justifying global obligations as fundamental duties of justice (moral aspect); and (2) demonstrating that global obligations are also rooted in and correspond to human rights recognized in core international human rights instruments (legal aspect). In this sense, global obligations are viewed as *morally justified legal obligations* of various actors. Philosophical justification and conceptualization of global obligations are important for understanding their content and scope and should promote their *legal recognition and implementation*.

Fourth, *human rights* precede and *are the source of corresponding territorial and extraterritorial obligations*. In comparison to other duties, human rights obligations are rooted in correlative human rights.⁸⁹ It is a claim that is an essential hallmark of human rights, that is, human rights are claimable against the relevant duty-bearers. Russian-Polish scholar and forerunner of the psychological conception

⁸⁵ SHUE, *supra* note 43, at 20.

⁸⁶ Human rights scholar Jeff King differentiates between five meanings of socio-economic rights: (1) *socio-economic human rights*, which belong to all human beings irrespective of their legal recognition, and aim to guarantee a global social minimum; (2) membership in a particular society entitles individuals to *socio-economic citizenship rights*, the scope of which goes beyond a global social minimum; (3) *international socio-economic rights* embedded in contemporary international human rights law and “mirroring” socio-economic human rights; (4) *constitutional socio-economic rights* proclaimed in states’ constitutional law and usually requiring legislative measures for their realization; and (5) enforceable and justiciable *legislative socio-economic rights* guaranteed by states’ laws. The first two meanings refer to the understanding of socio-economic rights as moral rights – entitlements justified in contemporary political or philosophical discourse. The further three meanings characterize human rights as legal rights – entitlements recognized by law at various levels. In this sense, any right and corresponding obligation may be presented in all (or some) of these five categories. KING, *supra* note 79, at 18–19.

⁸⁷ Raz, *supra* note 82, at 31, 36, 43.

⁸⁸ Global obligations are frequently considered to be moral duties rather than legal obligations. *See, for example*, Samantha Besson, *The Bearers of Human Rights Duties and Responsibilities for Human Rights – A Quiet (R)Evolution*, 32 SOC. PHI. & POL’Y 244 (2015).

⁸⁹ *See* NICKEL, *supra* note 79, at 11–12; SHUE, *supra* note 43, at 52–53, 59–60.

of law, Leon Petrazycki called this characteristic an “attributive” nature of law. According to Petrazycki, our rights are neither more nor less than the debts other individuals owe to us. In this respect, right-holders are the lords of our duties to them.⁹⁰ Thus, obligations corresponding to human rights exert a stronger influence on the behavior of duty-bearers than any other duties.⁹¹

On this premise, the task of justification and conceptualization of global obligations as human rights obligations calls for: (1) specifying internationally-recognized socio-economic rights that give rise to these global obligations;⁹² (2) determining and assigning corresponding individual and shared obligations to concrete actors (assigning extraterritorial obligations to various actors is possible thanks to what Raz calls the “dynamic” character of human rights, which are capable of generating new corresponding obligations⁹³); and (3) undertaking certain institutional arrangements to guarantee human rights obligations’ enforceability and justiciability.⁹⁴ Thus, taking socio-economic rights seriously requires taking corresponding global obligations seriously. Specified, allocated, claimable, and enforceable obligations are, according to philosopher Baroness Onora O’Neill, a sign that we are dealing with actual human rights and not with “manifesto” or “empty” rights.⁹⁵

Fifth, *human rights are reasons for taking international actions against global actors*. Justifying this thesis in relation to the state, Raz defines human rights as tools capable of setting limits on the sovereignty of states. This means that human rights are sufficient grounds for taking international action against a state that fails to realize its territorial human rights obligations.⁹⁶ This Article contends that, since

⁹⁰ LEON PETRAZYCKI, *LAW AND MORALITY* 47 (2011).

⁹¹ Raz likewise demonstrates that “rights are grounds of duties in others,” and they exist because they give rise to corresponding duties. He emphasizes the priority of rights over duties and shows that the former “are (part of) the justification” of the latter. In Raz’s opinion, human rights obligations “secure (at least to some degree) the right-holder’s control over the object of his right.” JOSEPH RAZ, *THE MORALITY OF FREEDOM* 167–86 (1986). *See also* Raz, *supra* note 82, at 36, 39. This thesis is close to Petrazycki’s ideas; however, from Petrazycki’s point of view, it is the claim-right grounding a corresponding obligation, and not the obligation itself, that gives the right-holder control over the behavior of the obliged person and the object of the right.

⁹² *Cf.* RAZ, *supra* note 91, at 183.

⁹³ *Id.* at 186.

⁹⁴ *See* TAN, *supra* note 28, at 51; WORLD POVERTY, *supra* note 43, at 70–73; HENRY J. STEINER ET AL., *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 187–88 (2008).

⁹⁵ Onora O’Neill, *The Dark Side of Human Rights*, 81 INT’L AFF. 427, 191, 431 (2005); ONORA O’NEILL, *CONSTRUCTIONS OF REASON: EXPLORATIONS OF KANT’S PRACTICAL PHILOSOPHY* 296 (1989). *Cf.* Raz, *supra* note 82, at 36, 39.

⁹⁶ It appears that Raz considers that states do not enjoy immunity from international interference not only when violating human rights, but also when failing to perform their duties to respect and

human rights give rise to extraterritorial obligations of all global actors, they provide grounds for: (1) sovereignty-limiting measures against states that fail to implement their human rights obligations towards individuals beyond their territory; and (2) taking international actions against all other global actors (IGOs, NSAs, and individuals) that fail to perform their extraterritorial obligations.

What features of human rights obligations stem from the characteristics of human rights analyzed above? Human rights obligations are (1) universal (that is, their addressees are people as members of humanity) and (2) high-priority obligations, which (3) derive from and correspond to human rights, (4) call for their legal recognition at various levels, and (5) authorize sovereignty-limiting measures to be taken against states and international actions against all other members of the global community.

Why is recognizing global obligations as human rights obligations so important? Raz convincingly demonstrates that not only the objects of a right (such as property, work, or information), but also the very possession of the right (which means enjoying secure access to their objects) are of value to the right-holders.⁹⁷ That is why social justice and human rights advocates contend that the lack of access to objects of basic socio-economic rights (such as adequate food, water, sanitation, housing, clothing, health, social security, and education), which is characteristic of poverty, reflects a serious structural human rights deficit.⁹⁸ A human rights-based approach suggests that the human rights deficit is both a cause and a consequence of poverty, while human rights realization is an important instrument for the alleviation of poverty and extreme inequality.⁹⁹ This approach treats the poor as holders of basic human rights to which obligations of members of the international community correspond. It interprets severe socio-economic deprivations as violations of human rights of the poor and breaches of responsible actors' correlative obligations. Poor individuals' inability to exercise their rights, which is not causally linked to particular agents' acts or omissions, gives rise to both obligations of territorial social support and global obligations to assist.

promote human rights. See Joseph Raz, *Human Rights Without Foundations* 9–10 (Univ. of Oxford Faculty of Legal Studies, Working Paper No. 14, 2007); Raz, *supra* note 82, at 42.

⁹⁷ Raz, *supra* note 82, at 36.

⁹⁸ See, for example, ActionAid, *Human Rights-Based Approaches to Poverty Eradication and Development* (2008), <http://perma.cc/3SK4-PV7G>.

⁹⁹ See, for example, Comm. on Econ., Soc. and Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: poverty and the International Covenant on Economic, Social and Cultural Rights: Statement, U.N. Doc. E/C.12/2001/10 (May 4, 2001). For critique of the view that human rights are aimed at and capable of reducing inequality, see SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* (2018).

Thus, in applying a human rights-based approach and emphasizing the precedence of human right claims to corresponding duties, this Article demonstrates that global obligations are morally justified human rights obligations that should receive legal recognition and realization.

E. Summary

This Section provided a normative foundation for the conception of global obligations. It elaborated a human-centered account, which sees a person as the ultimate unit of both moral and legal concern entitled to a special moral and legal status, basic equality, and membership in humanity. It defended the position that, human-centricity, which is embedded in the International Bill of Human Rights, serves as a justifying basis for global obligations (Section II.A). This idea is at the core of an appealing cosmopolitan vision of our obligations towards non-compatriots, though arguments made by proponents of statism should also be taken into account in determining the content and scope of states' global obligations (Section II.B). While elaborating a human rights-based cosmopolitan concept of justice, this Section suggested that global obligations are best envisioned as morally justified human rights obligations, which should receive legal recognition, regulation, and implementation within the polycentric global community of multiple autonomous actors (Sections II.C–II.D).

III. EXTRATERRITORIAL OBLIGATIONS CORRESPONDING TO SOCIO-ECONOMIC RIGHTS

This Section analyzes the extent to which extraterritorial duties should be acknowledged and implemented as shared human rights obligations of multiple global actors. It examines the specific character of “diagonal” legal relations and the significance of the recognition and realization of extraterritorial obligations for the shift from a state-centered to a human-centered global order (Section III.A), as well as the interrelation between remedial extraterritorial obligations and global obligations (Section III.C). It also explores global obligations borne by states, IGOs, NSAs, and individuals (Section III.B) and peculiarities of attributing global obligations to respect, protect, and fulfill socio-economic rights to those actors (Section III.D).

A. Diagonal Legal Relations: From State-Centered to Human-Centered Order

Modern legal theory distinguishes several categories of legal relations: horizontal relations between equal actors that are not subordinate to one another (states, IGOs, NSAs, and individuals); vertical relations between subjects that are at different levels of one hierarchy (individuals and their governments;

organizations' governing bodies and their members or employees); and diagonal relations between subjects not connected by horizontal or vertical relations (individuals and global actors). Horizontal, vertical, and diagonal relations are frequently interlinked; actors usually appear in several roles. Extraterritorial relations represent diagonal legal relations; they are complex and often involve multiple actors.

The Westphalian state-centered model of international legal order considers nation states exercising exclusive sovereignty over their territory to be primary actors, right-holders and duty-bearers, in the world arena, while individuals are seen as secondary actors. In this context, primary global human rights entitlements and obligations are attributed to states. Individuals may often only claim and defend their human rights on the international level through the agency of their state's government.

Contemporary international law is, however, not homogeneous but rather reflects a certain dualism. While international public law regulating relations among states proceeds from statist assumptions and applies principles of international justice, international human rights law penetrating states' borders and focusing on entitlements of persons is, in its main idea, cosmopolitan and appeals to global justice. In this sense, international human rights law has substantial potential to become global law.¹⁰⁰

Yet, contemporary international human rights law itself is riven by internal contradictions. It is to a large extent state-centered¹⁰¹ and tends to use traditional horizontal and vertical frameworks to regulate extraterritorial legal relations, which are diagonal by nature.

The substitution of diagonal relations with horizontal and vertical ones is both normatively and practically inadequate. Normatively, this substitution disempowers the actual right-holder (an individual) and transforms a duty-bearer (the state) into a right-holder, which is a denial of human rights.

The following examples explain why the substitution is also practically inappropriate and often leads to human rights abuses. First, the state is traditionally deemed the primary mediator in relations between individuals and NSAs, although expectations of the state's success in this role are unjustifiably high (as discussed below). Second, international assistance, including the Official Development Aid (ODA) provided by the wealthiest donor countries as part of

¹⁰⁰ See THE FRONTIERS OF HUMAN RIGHTS: EXTRATERRITORIALITY AND ITS CHALLENGES 1 (Nehal Bhuta ed., 2016). Louis Henkin asserted that "human rights have revolutionized the international system and international law. The law now reflects human values in addition to state values, or allows human values to modify state values." Louis Henkin, *Human Rights and State "Sovereignty"*, 25 GA. J. INT'L & COMP. L. 31, 43–44 (1996).

¹⁰¹ Lafont, *supra* note 68, at 198; LAFONT, *supra* note 76, at 54–55.

their global obligations, is addressed not directly to poor individuals and communities to ensure their enjoyment of basic socio-economic rights, but to their states (horizontal relations) in order to enable states to realize territorial obligations towards their citizens and residents (vertical relations). This practice is widely marred by corruption, misuse of funds, and human rights violations, exacerbating rather than solving the problems of global poverty and inequality.¹⁰² Third, there are a number of drawbacks to inter-state complaint mechanisms, which allow a state to file a claim against another state (horizontal relations) in defense of its residents (vertical relations):¹⁰³ (1) they do not allow individuals to formulate complaints; (2) they are not accessible if a home state government itself participates in human rights abuses; and (3) individuals rarely benefit from inter-state complaint procedures because states consider using them to be an “unfriendly act” toward other states.¹⁰⁴

According to legal scholar Thomas Gammeltoft-Hansen’s apt expression, legal science and practice must make a “quantum leap” to develop adequate tools for analyzing and regulating a reality that does not fit into the usual framework of horizontal and vertical relations.¹⁰⁵ This “quantum leap” presupposes two

¹⁰² On “the limited effectiveness of the use of foreign funds,” see Comm. on Econ., Soc. and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Georgia, ¶ 11, U.N. Doc. E/C.12/1Add.83 (2002). On the “mismanagement of international cooperation aid and unbalanced budgetary allocations that constitute serious breaches in the obligations,” see Comm. on Econ., Soc. and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Democratic Republic of Congo, ¶ 16, U.N. Doc. E/C.12/COD/CO/4 (2009) [CESCR Concluding observations on Congo]. The emphasis of global assistance should be placed on the human rights of individuals, and not on the duties of their states. This can be achieved through the acknowledgement of individuals’ rights to seek global assistance. The state should, therefore, act solely as people’s agent rather than a sovereign addressee and administrator of assistance. See Pribytkova, *supra* note 78, at 276–82.

¹⁰³ There is no international judicial body addressing individual complaints. The two world courts, the International Court of Justice and the International Criminal Court are able to act only on the basis of applications made by states (or other special subjects), but not individuals. Individuals from most states are still unable to access the existing UN treaty body-based individual complaint mechanisms—for example, the Committee on Economic, Social, and Cultural Rights (CESCR), Committee on the Rights of the Child (U.N. CRC), Committee on the Elimination of Discrimination Against Women (CEDAW), and the Committee on the Rights of Persons with Disabilities (U.N. CRPD)—since such access depends on states’ ratifications of optional protocols to treaties, which presuppose these complaint mechanisms.

¹⁰⁴ See VANDENBOGAERDE, *supra* note 6, at 184.

¹⁰⁵ Thomas Gammeltoft-Hansen, *Growing Barriers: International Refugee Law*, in UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS 80–81 (Gibney & Skogly eds., 2010). For an analysis of vertical and horizontal interpretations of human rights, see generally John H. Knox, *Horizontal Human Rights Law*, 102 AM. J. INT’L L. 1 (2008).

“revolutionary” changes that will undermine the Westphalian state-centered paradigm and prepare a move to a human-centered world order.¹⁰⁶

First, it requires a shift from the dominating theory and practice of international justice (which view states as major moral and legal subjects)¹⁰⁷ to that of global justice (which regard individuals as the ultimate units of moral and legal concern). While implementing the fundamental principle of human-centricity enshrined in the International Bill of Human Rights, international human rights law should recognize individuals as independent and full-fledged subjects of diagonal extraterritorial relations. Individuals should be seen as capable of claiming directly—in other words, without the mandatory mediation of the state—the realization of their human rights from global actors. Furthermore, individuals should enjoy secure and direct access to effective and affordable remedies in case of extraterritorial violations of their socio-economic rights by these actors.

Second, it demands attributing extraterritorial obligations not only to states, but also to other global actors so that they are directly accountable to individuals. As previously discussed, international law proceeds from a presumption of a “strong” state, treating states as the key global actors and the primary duty-bearers responsible for the realization of human rights within their territories and throughout the world.¹⁰⁸ This pattern, however, faces two difficulties.

On the one hand, although states play a significant role in the global arena, the role of NSAs in framing global order and influencing the enjoyment of human rights worldwide has increased dramatically. NSAs (in particular TNCs and international NGOs) and IGOs have come to the fore in shaping today’s global agenda, political discourse, rules, institutions, and practices. They are both global norm-setters and major violators of human rights, including basic socio-economic rights.¹⁰⁹ Many of them have capacities superior to those of the average state. For example, in 2017, out of the world’s top 100 economies, only thirty-one were countries while sixty-nine were TNCs.¹¹⁰ Ten million NGOs worldwide, which receive donations from nearly one-third of the Earth’s population and engage a

¹⁰⁶ On the necessity of this paradigm shift, see CLAPHAM, *supra* note 25, at 1; Peters, *supra* note 28, at 155.

¹⁰⁷ For critique of state-centrism, see TAN, *supra* note 28, at 35–39; Lafont, *supra* note 68, at 198–208; LAFONT, *supra* note 76, at 53–57; Domingo, *supra* note 76, at 582.

¹⁰⁸ As O’Neill rightly argues, states are considered “*primary agents of justice*,” while all other entities are “*secondary agents of justice*, whose contribution to justice is regulated, defined and allocated by states.” ONORA O’NEILL, JUSTICE ACROSS BOUNDARIES: WHOSE OBLIGATIONS? 160 (2016). See also Lafont, *supra* note 68, at 198–99.

¹⁰⁹ See NON-STATE ACTORS AS STANDARD SETTERS (Anne Peters et al. eds., 2009).

¹¹⁰ See 69 of the Richest 100 Entities on the Planet are Corporations, Not Governments, *Figures Show*, GLOBAL JUSTICE NOW (Oct. 17, 2018), <http://perma.cc/PV56-G7N7>.

quarter of them as volunteers, would together form the world's fifth largest economy.¹¹¹ Decisions of IGOs, especially U.N. agencies and the Bretton Woods Institutions (the World Bank and the International Monetary Fund (IMF)), substantially influence the political and economic systems of societies all over the world.¹¹² These global actors also have a greater capacity to help those in poverty than many states.¹¹³ Relatedly, the world's billionaires and other "ultra-high-net worth individuals" have substantial opportunities to alleviate poverty worldwide.¹¹⁴ Thus, traditional views of the state as the major actor and duty-bearer do not comport with contemporary global reality. Since human rights are legitimate entitlements of individuals against the international community, not only states but all global actors should bear obligations proportional to the capacities and freedoms they have.

On the other hand, states may no longer be the "natural problem-solving unit[s]" when it comes to the effective exercise of human rights.¹¹⁵ In fact, as philosopher Baroness Onora O'Neill correctly notes, they never were. Most states are incapable of acting as primary duty-bearers and agents of justice. For example, tyrannies and weak states cannot guarantee social justice and human rights realization for their citizens and residents, nor can they protect their citizens and residents from harms caused by other members of the international community.¹¹⁶ Home states often themselves participate in (willingly or unwillingly), initiate, and involve global actors in human rights abuses.¹¹⁷ While criticizing statist approaches to global justice, O'Neill notes that it is naïve to expect that states, as anti-cosmopolitan institutions, will take leading positions in implementing duties of

¹¹¹ See *25 Facts and Stats about NGOs Worldwide*, <http://perma.cc/U6MH-36EN>.

¹¹² See, for example, Tiago Stichelmans, *How International Financial Institutions and Donors Influence Economic Policies in Developing Countries* (Eurodad discussion paper, 2016), <http://perma.cc/E5S7-MK2D>.

¹¹³ Major foundations and NGOs are capable of providing assistance comparable to that of the biggest state donors. If the list of DAC donors included charitable organizations, the Bill & Melinda Gates Foundation, the world's biggest charitable organization, would take twelfth place. See *Private development assistance: key facts and global estimates*, DEVELOPMENT INITIATIVES (2016), <http://perma.cc/K4LV-2XLE>.

¹¹⁴ A mere 1% wealth tax imposed on the world's 2,208 billionaires and 256,000 "ultra-high-net worth individuals" would collect, \$420 billion per year, approximately 2.5 times more than contemporary ODA (\$146.6 billion). See JEFFREY D. SACHS ET AL., CLOSING THE SDG BUDGET GAP 26 (2018), <http://perma.cc/D6UM-9JPY>; OECD, *Development Aid Stable in 2017 with More Sent to Poorest Countries*, <http://perma.cc/ZC93-GVN6> [hereinafter OECD Development Aid].

¹¹⁵ See Jessica T. Mathews, *Power Shift*, 76 FOREIGN AFF. 50, 66 (1997).

¹¹⁶ O'NEILL, *supra* note 108, at 164–65.

¹¹⁷ States often ask for international assistance to finance "monstrous" projects, which abuse human rights of the most vulnerable individuals and groups. For example, the World Bank has funded projects for the construction of more than 500 dams in 92 countries that caused severe violations of human rights and serious environmental damages. See *Dams & the World Bank*, THE WHIRLED BANK GROUP (2003), <http://perma.cc/EY7F-WUVM>.

global justice.¹¹⁸ One can only agree with her thesis that the embodiment of justice and the realization of fundamental human rights should not be “endlessly postponed until more competent and just states emerge.”¹¹⁹ Therefore, in a rapidly changing world, multiple actors other than states (IGOs, NSAs, and individuals) should be recognized as agents of global justice and duty-bearers in diagonal extraterritorial relations.

Thus, the recognition of individuals as full-fledged subjects of extraterritorial legal relations and the allocation of extraterritorial obligations to multiple global actors should enable the “quantum leap” from international justice to global justice as well as from a state-centered to a human-centered global order. This does not, however, abolish states’ role as “agents” through which individuals may claim and enforce their human rights.¹²⁰ This also does not eliminate states’ obligations to influence the conduct of other actors as part of their territorial and extraterritorial duties to protect human rights.

B. Multiple Duty-Bearers

As the previous Section demonstrates, global legal relations involve multiple actors, all of which should be recognized as agents of justice and bearers of extraterritorial obligations. This Section examines normative foundations for extraterritorial human rights obligations of major global actors, along with the peculiarities of their obligation regimes.

Global actors may be classified into several main groups: states, IGOs, NSAs, and individuals.¹²¹ The obligation regimes of these actors differ, though they also often overlap. The content and scope of their obligations depend on several factors. First, they depend on the actors’ nature and the purposes of their creation (for collective actors). Though all actors possess certain extraterritorial obligations corresponding to socio-economic rights, some of them (for instance,

¹¹⁸ O’NEILL, *supra* note 108, at 160. Some question whether international law itself is part of the solution of regulating the behavior of NSAs *versus* part of the problem. For an analysis, see CLAPHAM, *supra* note 25, at 6.

¹¹⁹ Cf. “If we take the universalism of obligations as seriously as we have often taken the universalism of rights, we need to look realistically at actual agents and agencies, with their actual powers and vulnerabilities.” O’NEILL, *supra* note 108, at 176.

¹²⁰ For the role of states as people’s agents in relation to the right to development, see GLOBAL RESPONSIBILITY, *supra* note 13, at 116.

¹²¹ Global actors may also be classified into two categories: NSAs, which include a wide range of subjects from IGOs to individuals, and states. *See, for example*, CLAPHAM, *supra* note 25; NON-STATE ACTORS IN INTERNATIONAL LAW 2 (Math Noortmann et al. eds., 2015); Peters et al., *supra* note 109, at 14. For the purpose of my study, I distinguish IGOs and individuals into separate categories.

certain U.N. special agencies,¹²² foundations, and NGOs) specially aim to provide assistance to those in need. Second, obligations are contingent on the role played by a particular actor. For example, states' extraterritorial obligations vary when they act directly or through IGOs, or regulate the conduct of NSAs. Third, obligation regimes depend on whether global actors are individual or collective actors.

It is necessary to differentiate between two types of collective obligations: corporate obligations that fall on the "collective as a whole" (without separating the actors that belong to it), and shared obligations where bearers are autonomous members of a collective.¹²³ IGOs and NSAs bear corporate obligations. A group of independent collaborating actors, such as U.N. member states, are bound by shared extraterritorial obligations.

Several interconnected issues related to multiple actors' extraterritorial obligations are in the spotlight of contemporary discussions. In particular, it is widely debated whether IGOs, NSAs, and individuals can be bound by extraterritorial human rights obligations corresponding to socio-economic rights, especially by global obligations, notwithstanding the fact that only states are parties to most human rights treaties.¹²⁴ It is also debated whether global actors should be directly accountable for their failure to implement these obligations or whether obligations should run, in the first instance, through states as primary duty-bearers. The following two Subsections suggest answers to these questions.

1. What is the Normative Framework of Global Actors' Extraterritorial Obligations?

The traditional interpretation of states as the only (or the primary) bearers of human rights obligations is inadequate.¹²⁵ The following analysis turns to the normative foundations for human rights obligations of global actors other than states. Specifically, it considers: (1) core international human rights instruments; (2) customary international law; (3) *jus cogens*; and (4) self-regulatory soft law instruments.

¹²² For example, the United Nations Development Programme (UNDP), the United Nations International Children's Emergency Fund (UNICEF), the International Labour Organization (ILO), the Food and Agriculture Organization (FAO), the World Health Organization (WHO), and the United Nations Industrial Development Organization (UNIDO).

¹²³ On collective obligations see Roland Pierik, *Shared Responsibility in International Law: A Normative-Philosophical Analysis*, in *DISTRIBUTION OF RESPONSIBILITIES IN INTERNATIONAL LAW* 43–50 (André Nollkaemper & Dov Jacobs eds., 2015).

¹²⁴ IGOs may also be parties to legally binding international human rights treaties. For instance, the EU is a party to the Convention on the Rights of Persons with Disabilities (CRPD).

¹²⁵ See also CLAPHAM, *supra* note 25, at 7; Vandenhole, *supra* note 18, at 1; VANDENBOGAERDE, *supra* note 6, at 6–14; Peters, *supra* note 28, at 155.

First, some core international human rights instruments recognize IGOs, NSAs, and individuals as bearers of human rights obligations. For example, the UDHR proceeds from the assumption that not just states but “every individual and every organ of society” should strive to promote respect for human rights and to “secure their universal and effective recognition and observance” through progressive national and international measures.¹²⁶ According to the UDHR, “everyone has duties to the community in which alone the free and full development of his personality is possible.”¹²⁷ It also requires states, individuals, and groups to refrain from violations of human rights and freedoms set forth in the Declaration.¹²⁸ This requirement is reaffirmed by the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹²⁹ Though the ICESCR and the Convention on the Rights of the Child (CRC) focus on states’ obligations, the bodies aimed at monitoring the implementation of these treaties—the Committee on Economic, Social, and Cultural Rights (CESCR)¹³⁰ and the Committee on the Rights of the Child (U.N. CRC)¹³¹—clarify that socio-economic rights bind other global actors (IGO, NSAs, and individuals) as well. Relatedly, the Convention on the Rights of Persons with Disabilities (CRPD) determines states’ obligations to

¹²⁶ UDHR, *supra* note 2, at pmb.

¹²⁷ *Id.* at art. 29, ¶ 1.

¹²⁸ *Id.* at art. 30.

¹²⁹ ICESCR, *supra* note 27, at art. 5, ¶ 1.

¹³⁰ See Comm. on Econ., Soc. and Cultural Rights, Gen. Comment No. 12: The Right to Adequate Food (Art. 11), ¶¶ 36, 38, 40, U.N. Doc E/C.12/1999/5 (May 12, 1999) [hereinafter CESCR Gen. Comment No. 12]; Comm. on Econ., Soc. and Cultural Rights, Gen. Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), ¶¶ 45, 63, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter CESCR Gen. Comment No. 14]; Comm. on Econ., Soc. and Cultural Rights, Gen. Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), ¶ 38, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter CESCR Gen. Comment No. 15]; Comm. on Econ., Soc. and Cultural Rights, Gen. Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of which He or She Is the Author (Article 15, ¶ 1 (c), of the Covenant), ¶¶ 61, 8240, U.N. Doc. E/C.12/GC/17 (Jan. 12, 2006) [hereinafter CESCR Gen. Comment No. 17]; Comm. on Econ., Soc. and Cultural Rights, Gen. Comment No. 18: The Right to Work (Art. 6 of the Covenant), ¶ 53, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006) [hereinafter CESCR Gen. Comment No. 18]; Comm. on Econ., Soc. and Cultural Rights, Gen. Comment 19: The Right to Social Security (Art. 9), ¶ 61, U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008) [hereinafter CESCR Gen. Comment No. 19]. See also The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, ¶ 34, U.N. Doc. E/CN.4/1987/17, Annex (1987) [hereinafter Limburg Principles], reprinted in *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, 9 Hum. Rts. Q. 122, 126–27 (1987).

¹³¹ See, for example, Comm. on the Rights of the Child, Concluding observations on the combined third to sixth periodic reports of Guinea, ¶¶ 14–15, U.N. Doc. CRC/C/GIN/CO/3-6 (2019); Comm. on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Japan, ¶ 15, U.N. Doc. CRC/C/JPN/CO/4-5 (2019).

cooperate with international and regional organizations and civil society.¹³² The Vienna Declaration and Programme of Action and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms also bring attention to the importance of international cooperation and obligations of individuals, social groups, institutions, and NGOs in promoting the right to a social and international order in which human rights are fulfilled.¹³³

Second, despite the fact that customary international law remains state-focused, it also provides a legal basis for extraterritorial obligations, including global obligations, of multiple actors. Custom is traditionally interpreted through two elements: (1) frequent and consistent practice and (2) *opinio juris*—an expressed belief that this practice realizes legal obligations, in particular, in international hard and soft law instruments.¹³⁴ Contemporary *opinio juris* formed by soft law instruments recognizes the human rights obligations of IGOs and NSAs. For example, the UDHR, which is generally considered to be an important part of customary international law,¹³⁵ acknowledges global human rights obligations of individuals and “organs of society” corresponding to two important entitlements: the entitlement to the realization of socio-economic rights indispensable for the enjoyment of human dignity universally (Art. 22) and the

¹³² G.A. Res. 61/106, Convention on Rights of Persons with Disabilities, art. 32, ¶ 1 (Jan. 24, 2007).

¹³³ G.A. Res. 48/12, Vienna Declaration and Programme of Action, art. 13 (Jul. 12, 1993); G.A. Res. 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, pmbl., art. 18.3 (Dec. 9, 1998), <http://perma.cc/TMU3-RAZJ> [hereinafter Declaration on the Right and Responsibility].

¹³⁴ While traditional approaches to customary international law emphasize the significance of practice, modern approaches give precedence to *opinio juris*. Anthea Elizabeth Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*, 95 AM. J. INT’L L. 757, 757–58 (2001); OLIVIER DE SCHUTTER, INTERNATIONAL HUMAN RIGHTS LAW: CASES, MATERIALS, COMMENTARY 63–64 (2014); SKOGLY, *supra* note 11, at 109–10. Frederic Kirgis places these two elements at different ends of a sliding scale and argues that the more frequent and consistent the practice, the less evidence of *opinio juris* is necessary for the establishment of a custom and *vice versa*. Frederic L. Kirgis, *Custom on a Sliding Scale*, 81 AM. J. INT’L L. 146, 149 (1987).

¹³⁵ There is, however, a debate about whether customary international law covers the entire UDHR or only its particular norms, especially whether socio-economic rights and corresponding obligations are integrated into it. See Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 AUST. Y.B. INT’L L. 82, 100–02 (1988–89); LOUIS HENKIN, THE AGE OF RIGHTS 19 (1990); Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 3 HEALTH AND HUM. RTS.: AN INT’L J. 144 (1998); Olivier De Schutter, *The Status of Human Rights in International Law*, in INTERNATIONAL PROTECTION OF HUMAN RIGHTS: A TEXTBOOK 39, 41 (Catarina Krause & Martin Scheinin eds., 2009); CLAPHAM, *supra* note 25, at 86; SKOGLY, *supra* note 11, at 110. The Charter of the United Nations (U.N. Charter) and the ILC Articles on Responsibility of States for Internationally Wrongful Acts (ILC Articles) regulating states’ extraterritorial obligations are also often acknowledged as part of customary international law.

entitlement to a just global order in which these rights can be fully realized (Art. 28).¹³⁶

In addition, the Millennium Development Goals (particularly Goal 8, which demands the “develop[ment of] a global partnership for development”) and the Sustainable Development Goals (especially Goal 17, which requires the “strengthen[ing of] the means of implementation and revitaliz[ation of] the global partnership for sustainable development”) reinforce the intention of states and other members of the global community to cooperate for the realization of essential social and economic interests of individuals. In particular, they emphasize the global commitments of eradicating extreme poverty and hunger, guaranteeing secure access to food, water, sanitation, health care, and basic education for all, which are also objects of basic socio-economic rights.¹³⁷

At the same time, there is no consensus on the status of global obligations. Despite the fact that members of the international community have repeatedly demonstrated their intention to contribute to global poverty eradication within the framework of both human rights and development agendas, developed states, IGOs, and NSAs have unambiguously expressed reluctance to bind themselves with legal instruments regulating global obligations, especially obligations to assist in the realization of socio-economic rights.¹³⁸ Therefore, according to contemporary *opinio juris*, global obligations represent voluntary commitments rather than human rights-based obligations. The same trend can be found in the practice of the implementation of global obligations by various actors.¹³⁹ This implies an intermediate conclusion that global obligations form a part of customary international law only as voluntary self-obligations of various global actors rather than human rights obligations.¹⁴⁰

Third, *jus cogens*, the preemptory norms of international law overriding all other legal sources, are not only binding on states, but also on IGOs, NSAs, and individuals. *Jus cogens* embrace fundamental, or core, human rights that are

¹³⁶ See Section IV.B below.

¹³⁷ See Philip Alston, *A Human Rights Perspective on the Millennium Development Goals*, Paper prepared as a contribution to the work of the Millennium Project Task Force on Poverty and Economic Development, ¶¶ 41–42, 48; Gobind Nankani et al., *Human Rights and Poverty Reduction Strategies: Moving Towards Convergence?* in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 475 (Philip Alston & Mary Robinson eds., 2005); CLAPHAM, *supra* note 25, at 86–87.

¹³⁸ Alston, *supra* note 137, at ¶ 42.

¹³⁹ On the practice of the realization of international obligations to assist, see Pribytkova, *supra* note 78, at 300–330.

¹⁴⁰ See Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals*, 27 HUM. RTS. Q. 755, 778 (2005); Alston, *supra* note 137, at ¶¶ 42, 48.

addressed to all global actors.¹⁴¹ Although there have been doubts in literature about the potential of socio-economic rights to become a part of *jus cogens*,¹⁴² several scholars maintain that, as a necessary condition for the realization of *jus cogens* human rights (for example, the right to life), basic socio-economic rights, and corresponding obligations, should receive the status of *jus cogens* norms.¹⁴³

Fourth, an increasing number of global actors take on extraterritorial obligations by joining or adopting self-regulatory soft law instruments. Prominent examples of such self-regulatory instruments are international framework agreements and corporate codes of conduct.¹⁴⁴

Based on this brief analysis of the normative foundations for human rights obligations of global actors, it is clear that contemporary international human rights law recognizes that human rights give rise to corresponding obligations not only of states, but also of other global actors. This concerns negative obligations to respect human rights, whereas positive global obligations to protect and fulfill socio-economic rights are interpreted as self-commitments of members of the international community.

2. How are Extraterritorial Obligations of Various Actors Regulated?

This Subsection briefly outlines the current legal regime regulating extraterritorial human rights obligations of states, IGOs, NSAs, and individuals, while also pointing out existing gaps in this regime. It does not attempt, however, to propose principles for attributing particular global obligations to these different categories of entities. That is a research agenda that requires further careful attention beyond the scope of this Article.

First, *states*. As key agents in the international arena, states play several roles and are bound by three types of extraterritorial obligations: (1) direct extraterritorial obligations; (2) obligations as members of IGOs; and (3) obligations to regulate and influence the conduct of NSAs and individuals.

(1) Recognizing *direct extraterritorial obligations* of states requires rethinking the concept of jurisdiction, which signifies a certain normative relationship between

¹⁴¹ See International Law Commission, Yearbook of the International Law Commission, art. 50, U.N. Doc. A/CN.4/SER.A/1966/Add.1 (1966).

¹⁴² See, for example, Predrag Zenović, *RGSJ Research Papers, No. 6: Human Rights Enforcement via Peremptory Norms – a Challenge to State Sovereignty* 36–37 (2012).

¹⁴³ See, for example, INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW 36 (Francisco Forrest Martin et al. eds., 2006).

¹⁴⁴ See, for example, Lisa R. Price, *International Framework Agreement: A Collaborative Paradigm for Labor Relations*, in OLIVIER DE SCHUTTER, TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS 241 (2006); Fiona McLeay, *Corporate Codes of Conduct and the Human Rights Accountability of Transnational Corporations: A Small Piece of a Larger Puzzle*, in OLIVIER DE SCHUTTER, TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS 219 (2006).

states and individuals.¹⁴⁵ International public law proceeds from a presumption, particularly expressed in the Vienna Convention on the Law of Treaties, that international treaties are binding upon state parties within their territory.¹⁴⁶ There are no jurisdictional restrictions in the ICESCR that explicitly recognizes that states have extraterritorial obligations corresponding to socio-economic rights while mentioning their obligations of international assistance and cooperation.¹⁴⁷ However, the Optional Protocol to the ICESCR, which allows the bringing of individual complaints to the consideration of the CESCR, uses the criterion of jurisdiction.¹⁴⁸ According to the case law of U.N. treaty bodies, states' jurisdiction extends to situations when they exercise effective territorial and personal control, as well as when there is a causal link between their activity and human rights impacts.¹⁴⁹ Article 2 of the ICESCR also implies that states' jurisdiction embraces situations where they act for the realization of socio-economic rights universally.¹⁵⁰ Though a binding human rights instrument regulating states' extraterritorial obligations is still lacking, the Maastricht Principles and accompanying commentaries provide a systematic explication of states' extraterritorial obligations in the area of socio-economic rights.¹⁵¹

¹⁴⁵ It is customary to classify several dimensions of jurisdiction: subject-matter jurisdiction; territorial jurisdiction; personal jurisdiction; and temporal jurisdiction.

¹⁴⁶ Vienna Convention on the Law of Treaties, art. 29, May 23, 1969, 1155 U.N.T.S. 331.

¹⁴⁷ ICESCR, *supra* note 27, at art. 2.

¹⁴⁸ G.A. Res. 63/117, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 2 (Mar. 5, 2009).

¹⁴⁹ In concluding observations on Israel, the CESCR asserted that jurisdiction includes all territories and populations under states' effective control. Comm. on Econ., Soc. and Cultural Rights, Report on the Eighteenth and Nineteenth Sessions, ¶ 234, U.N. Doc. E/1999/22, E/C.12/1998/26 (1999). According to the U.N. Human Rights Committee (HRC), which considers individual complaints for violations of human rights recognized in the ICCPR, jurisdiction concerns the links between individuals and states relating to human rights violations. *See* HRC, Delia Saldias de Lopez v. Uruguay, Communication App. No. 52/1979, ¶ 12.2, U.N. Doc. CCPR/C/OP/1 (1984). *See also* HRC, Gen. Comment No. 36, on the Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, ¶¶ 26, 66, U.N. Doc. CCPR/C/GC/36 (2018). The European Court of Human Rights came to the same conclusion about states' jurisdiction. *See, for example*, Al-Jedda v. the United Kingdom, App. No. 27021/08; Catan and Others v. the Republic of Moldova and Russia, App. No. 43370/04; Chiragov and Others v. Armenia, App. No. 13216/05.

¹⁵⁰ U.N. treaty-based bodies, the CESCR, the U.N. CRC, and the CEDAW demand that states do not violate socio-economic rights abroad as well as implement their global obligations. *See, for example*, Comm. on Soc. and Cultural Rights, Concluding observations on the sixth periodic report of Germany, ¶¶ 8–9, 12–15, 20–21, U.N. Doc. E/C.12/DEU/CO/6 (2018); Comm. on the Rights of the Child, Combined fourth and fifth reports submitted to the CRC by Singapore under article 44 of the Convention, ¶ 29, U.N. Doc. CRC/C/SGP/4-5 (2017); Comm. on the Elimination of Discrimination Against Women, Concluding observations on the ninth periodic report of Norway, ¶ 14–15, U.N. Doc. CEDAW/C/NOR/CO/9 (2017).

¹⁵¹ For an analysis of lacunas in the Maastricht Principles, see Section IV.A.

(2) States also bear extraterritorial obligations *as members of IGOs*. In several General Comments, the CESCR notes that states “have an obligation to ensure that their actions as members of intergovernmental organizations, including international financial institutions, take due account” of basic socio-economic rights.¹⁵² The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights specify that states are responsible for “violations resulting from the programmes and policies of the organizations of which they are members.”¹⁵³ Since there are currently no mechanisms for holding IGOs directly accountable for their violations of socio-economic rights, researchers and practitioners propose bringing to account states that play key roles in the decision-making of these organizations.¹⁵⁴ This Article advocates the recognition of IGOs’ direct accountability.

(3) In the contemporary state-centered international order, states are expected to *regulate and influence the conduct of NSAs and individuals*.¹⁵⁵ The CESCR and the U.N. CRC, however, require states to regulate NSAs primarily as part of

¹⁵² See Comm. on Econ., Soc. and Cultural Rights, Gen. Comment No. 13: The Right to Education (Art. 13), ¶ 56, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999) [hereinafter CESCR Gen. Comment No. 13]; CESCR Gen. Comments No. 12, 14, and 18, *supra* note 130. *Cf.* the ETO Consortium, *supra* note 7 (principle 15 of the Maastricht Principles) (“As a member of an international organization, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an international organization must take all reasonable steps to ensure that the relevant organization acts consistently with the international human rights obligations of that State.”). The CESCR also requires states to report on how their participation in the decision-making and norm-setting of IGOs affects the enjoyment of socio-economic rights world-wide. See Guidelines on treaty-specific documents to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, ¶ 3(c), E/C.12/2008/224 (Mar. 2009).

¹⁵³ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 20 HUM. RTS. Q. 691, 698 (1998).

¹⁵⁴ See, *for example*, FONS COOMANS & ROLF KÜNNEMANN, CASES AND CONCEPTS ON EXTRATERRITORIAL OBLIGATIONS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS 52–61 (2012).

¹⁵⁵ See International Law Commission, *ILC Articles*, U.N. Doc. A/RES/56/83 (Jan. 28, 2002) (the ILC Articles); ETO Consortium, *supra* note 7 (principle 26 of the Maastricht Principles); U.N. Guiding Principles, *supra* note 16; Comm. on Econ., Soc. and Cultural Rights, Gen. Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, U.N. Doc. E/C.12/GC/24 (Aug. 10, 2017) [hereinafter CESCR Gen. Comment No. 24]. States’ obligations to regulate and influence the conduct of NSAs and individuals should not be confused with states’ responsibility for the conduct of NSAs and individuals in cases when the latter are directed and controlled by the state. International Law Commission, *supra* note 141, at art. 8. *Cf.* ETO Consortium, *supra* note 7 (principle 12 of the Maastricht Principles).

their territorial, rather than extraterritorial, obligations.¹⁵⁶ These requirements often exceed the ability of developing countries to control more powerful NSAs, especially TNCs, affiliated with developed states. Commentators draw attention to the fact that the CESCRC's emphasis on obligations of home states to protect their citizens from the negative impact of global actors¹⁵⁷ does not promote the acceptance of these actors' direct obligations, nor does it promote obligations of the states with which they are affiliated.¹⁵⁸ U.N. treaty bodies have only recently begun requiring states to govern the extraterritorial conduct of TNCs registered or domiciled in their territory.¹⁵⁹

Second, *intergovernmental organizations*, which consist of member states, represent organizations "established by a treaty or other instrument governed by international law and possessing [their] own international legal personalit[ies]."¹⁶⁰ IGOs, especially financial institutions, command great resources and power without adequate accountability.¹⁶¹ Presently, there are neither binding legal instruments regulating direct human rights obligations of IGOs¹⁶² nor international bodies with jurisdiction to hold IGOs directly accountable for their failure to implement their human rights obligations. Additionally, IGOs usually enjoy immunity from the jurisdiction of domestic accountability mechanisms.¹⁶³

¹⁵⁶ See, for example, Comm. on Econ., Soc. and Cultural Rights, Concluding observations on the Fifth Periodic report of Columbia, ¶ 10, U.N. Doc. E/C.12/COL/CO/5 (2010); Comm. Rights Child, Concluding observations on the Third and Fourth Periodic report of Sri Lanka, ¶¶ 18–19, U.N. Doc. CRC/C/LKA/CO/3-4 (2010).

¹⁵⁷ See, for example, CESCRC Concluding observations on Congo, *supra* note 102, at ¶ 3; Comm. on the Rights of the Child, Concluding observations on the Second Periodic report of Cuba, ¶ 21, U.N. Doc. CRC/C/CUB/CO.2 (2011).

¹⁵⁸ VANDENBOGAERDE, *supra* note 6, at 78.

¹⁵⁹ See, for example, Comm. on Econ., Soc. and Cultural Rights, Concluding observations on the fourth periodic report of New Zealand, ¶ 16, U.N. Doc. E/C.12/NZL/CO/4 (2018); Comm. on Elimination of Discrimination Against Women, Concluding observations on the combined eighth and ninth periodic reports of Canada, ¶¶ 18–19, U.N. Doc. CEDAW/C/CAN/8-9 (2016).

¹⁶⁰ Draft Articles on International Organizations, *supra* note 16, art. 2(a).

¹⁶¹ See, for example, Philip Alston, Report of the Special Rapporteur on extreme poverty and human rights, the World Bank and human rights, ¶ 65, U.N. Doc. A/70/274 (2015) [hereinafter *The World Bank and Human Rights*]; Philip Alston, Report of the Special Rapporteur on extreme poverty and human rights, the role of the International Monetary Fund (IMF) in relation to social protection, ¶ 58, U.N. Doc. A/HRC/38/33 (2018) [hereinafter *The Role of the IMF*].

¹⁶² The Draft Articles on Responsibility of International Organizations deal with international organizations' breaches of international obligations determined as acts which are "not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned" (art. 10), that is, this includes violations of global human rights obligations. Draft Articles on International Organizations, *supra* note 16.

¹⁶³ For discussion of the U.N. immunity, see Philip Alston, Report of the Special Rapporteur on extreme poverty and human rights, U.N. responsibility for the introduction of cholera into Haiti,

The CESCR requires states to implement human rights in cases of their membership in or cooperation with IGOs. It focuses, therefore, on territorial and extraterritorial obligations of states, without due regard to direct obligations of IGOs themselves.¹⁶⁴ The recognition of the responsibility of participating states for actions or omissions of IGOs is insufficient, especially when states have limited control over IGOs' activities.¹⁶⁵

According to the traditional view, IGOs are only bound by duties to respect human rights, with some limited obligations to protect them, whereas the duty to fulfill human rights is beyond their concern. The Tilburg Guiding Principles on the World Bank, IMF and Human Rights,¹⁶⁶ as well as some researchers and practitioners,¹⁶⁷ voice this view about the Bretton Woods Institutions. Conversely, the Maastricht Principles, which are, by their terms, applicable to IGOs, provide that IGOs are bound by extraterritorial obligations, including global obligations to respect, protect, and fulfill socio-economic rights.¹⁶⁸

Third, *non-state actors* are collective entities that are not states, do not consist of states, and are not directed or funded by states.¹⁶⁹ They include, but are not limited to, TNCs, NGOs, religious groups, media organizations, as well as paramilitary and armed resistance groups. This Subsection considers TNCs in particular, as they are major global actors and frequent violators of human rights worldwide. They form a salient example for framing the broader question of whether NSAs should be recognized as bearers of global human rights obligations.

TNCs' extraterritorial obligations are regulated by soft law instruments.¹⁷⁰ A

U.N. Doc. A/71/367 (2016); José Enrique Alvarez, *The U.N. in the Time of Cholera*, 108 AM. J. INT'L L. UNBOUND 22, 24–25 (2014–15).

¹⁶⁴ See, for example, CESCR Gen. Comments No. 12, 14, 18, *supra* note 130; CESCR Gen. Comment No. 13, *supra* note 152.

¹⁶⁵ See VANDENBOGAERDE, *supra* note 6, at 72.

¹⁶⁶ “As international legal persons, the World Bank and the IMF have international legal obligations to take full responsibility for human rights respect in situations where the institutions’ own projects, policies or programmes negatively impact or undermine the enjoyment of human rights.” Tilburg Guiding Principles, *supra* note 16, at 250.

¹⁶⁷ See SKOGLY, *supra* note 8. Mac Darrow asserts that obligations of the World Bank and the IMF to fulfill may also arise, especially in the context of cooperation with human rights organs, though he does not specify them. MAC DARROW, BETWEEN LIGHT AND SHADOW: THE WORLD BANK, THE INTERNATIONAL MONETARY FUND, AND INTERNATIONAL HUMAN RIGHTS LAW 131–33 (2003).

¹⁶⁸ ETO Consortium, *supra* note 7 (principle 16 of the Maastricht Principles).

¹⁶⁹ For definition, see, for example, CLAPHAM, *supra* note 25, at 25; Peters et al., *supra* note 109, at 14.

¹⁷⁰ See, for example, U.N. Guiding Principles, *supra* note 16; U.N. Subcomm. on the Promotion and Protection of Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, art. 1, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 26, 2003) [hereinafter U.N. Norms]; U.N. Global Compact, <http://perma.cc/5GYN-SS8G>; OECD, OECD Guidelines for Multinational Enterprises (2001); International Organization for Standardization, ISO 26000 Social Responsibility (2010),

special U.N. Human Rights Council open-ended intergovernmental working group has been mandated to elaborate a Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (Legally Binding Instrument).¹⁷¹ One of the most debated questions in this context is whether extraterritorial obligations of TNCs extend beyond obligations to respect.¹⁷²

Two significant international instruments provide distinct answers to this question. The U.N. Guiding Principles on Business and Human Rights (U.N. Guiding Principles) limit extraterritorial obligations of TNCs to the obligation to respect,¹⁷³ while the obligation to regulate and influence their activity falls on the state.¹⁷⁴ This minimalistic interpretation of TNCs' direct obligations has been criticized by experts.¹⁷⁵ Though the U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (U.N. Norms) also reaffirm the primary obligations of states, they recognize that "within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to *promote, secure the fulfilment of, respect, ensure respect of and protect human rights* recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups."¹⁷⁶ The U.N. Norms acknowledge that TNCs, "as organs of society," are responsible for "promoting

<http://perma.cc/E83C-NT3E>; International Labour Organization, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (2017).

¹⁷¹ See Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, U.N. HUMAN RIGHTS COUNCIL, <http://perma.cc/N6DJ-XBVG>.

¹⁷² See, for example, Alston & Robinson, *supra* note 137; David Bilchitz, *Do Corporations Have Positive Fundamental Rights Obligations?*, 57 THEORIA 1 (2010); HUMAN RIGHTS OBLIGATIONS OF BUSINESS: BEYOND THE CORPORATE RESPONSIBILITY TO RESPECT? (Surya Deva & David Bilchitz eds., 2013) [hereinafter OBLIGATIONS OF BUSINESS]; BUILDING A TREATY ON BUSINESS AND HUMAN RIGHTS: CONTEXT AND CONTOURS (Surya Deva & David Bilchitz eds., 2017) [hereinafter BUILDING A TREATY].

¹⁷³ U.N. Guiding Principles, *supra* note 16, at 13 (principle 11). At the same time, in the U.N. Guiding Principles, the obligation to respect is specified not only as avoiding causing human rights violations or contributing to them through transnational corporation's own activities, but also as preventing or mitigating violations "directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts." *Id.* at 14–15 (principle 13).

¹⁷⁴ *Id.* at 3–12 (principles 1–10).

¹⁷⁵ See, for example, OBLIGATIONS OF BUSINESS, *supra* note 172; BUILDING A TREATY, *supra* note 172; FLORIAN WETTSTEIN, MULTINATIONAL CORPORATIONS AND GLOBAL JUSTICE: HUMAN RIGHTS OBLIGATIONS OF A QUASI-GOVERNMENTAL INSTITUTION (2009) [hereinafter MULTINATIONAL CORPORATIONS]; Florian Wettstein, *CSR and the Debate on Business and Human Rights: Bridging the Great Divide*, 22 BUS. ETHICS Q. 739 (2012) [hereinafter CSR].

¹⁷⁶ U.N. Norms, *supra* note 170, at art. 1 (emphasis added). For a comparative analysis of the U.N. Norms and the U.N. Guiding Principles, see Vandenhoe, *supra* note 6.

and securing” human rights.¹⁷⁷ In addition, some U.N. treaty bodies go beyond the U.N. Guiding Principles, concluding that TNCs have a duty to protect human rights.¹⁷⁸

Though the U.N. Norms did not receive wide acceptance, the idea that TNCs, as social entities or “organs of society,” should perform societal goals and, therefore, contribute to the realization of shared global obligations corresponding to socio-economic rights, is being developed by researchers and practitioners.¹⁷⁹ This reasoning is supported by empirical evidence that TNCs have immense resources and, consequently, the potential to promote global poverty eradication.

Since a revised draft of the Legally Binding Instrument presupposes that business enterprises possess only obligations to respect human rights,¹⁸⁰ the legal recognition of TNCs’ positive obligations to contribute to the protection and fulfillment of socio-economic rights is a task for the future development of human rights law.

Fourth, *individuals*. Human rights-based cosmopolitanism builds on the foundation that individuals should play the key role in the global domain as both rights-holders and duty-bearers. In accordance with the UDHR, which recognizes the human rights obligations of individuals, the Declaration on the Right to Development (DRD) reaffirms that “the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development.”¹⁸¹

Individuals act in several roles and participate in several types of relations: in horizontal relations with their compatriots as right-holders and duty-bearers and with global actors as bearers of shared extraterritorial obligations; in vertical relations with their state as right-holders; and in diagonal relations with global actors as right-holders. There are two major “channels” for individuals to realize

¹⁷⁷ U.N. Norms, *supra* note 170, at pmb., arts. 13–14.

¹⁷⁸ See Comm. on the Rights of the Child, Concluding Observations on the Fourth Periodic report of Ecuador, ¶ 31, U.N. Doc. CRC/C/ECU/431 (2010); Comm. on the Rights of the Child, Concluding observations on the Third and Fourth Periodic report of Sri Lanka, ¶ 19, U.N. Doc. CRC/C/LKA/CO/3-4 (2010).

¹⁷⁹ For example, David Bilchitz justifies positive obligations of corporations as both remedial responsibilities and global obligations to assist. Bilchitz, *supra* note 172. See also Vandenhoe, *supra* note 6; MULTINATIONAL CORPORATIONS, *supra* note 175; CSR, *supra* note 175; OBLIGATIONS OF BUSINESS, *supra* note 172; BUILDING A TREATY, *supra* note 172.

¹⁸⁰ U.N. OHCHR, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (July 16, 2019), <http://perma.cc/B5XP-FXCH>.

¹⁸¹ G.A. Res. 41/128, Declaration on Right to Development, pmb. (Dec. 4, 1986). The DRD continues that “every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. *Id.* at art. 1.

their human rights and obligations, namely, their state and (organizations of) global civil society.

Within this analysis, how should we understand the place of the *global community* as a collective subject of obligations? Two main entities interact within the global community: the international community of states, which includes states and IGOs, and the global civil society, which embraces NSAs and individuals. The creation of an international community of states is one of the main objectives of the Charter of the United Nations (U.N. Charter). International lawyer Andrew Clapham compares the growth of global civil society with “bottom-up” globalization, which is a response to “top-down” globalization.¹⁸² He also shows that globalization has substantially limited states’ capacities to respond to new world challenges. Since individuals are not able to count on the protection and assistance of their governments, they are forced to mobilize for common action in order to protect themselves against foreign states and NSAs and to exercise their human rights.¹⁸³ In this sense, global civil society is both a very powerful actor that is in horizontal legal relations to other global actors and an important medium through which fundamental interests and human rights of individuals are presented and defended and through which shared extraterritorial obligations of individuals may be implemented.

Based on the preceding analysis, this Article concludes that all global actors—states, IGOs, NSAs, and individuals—should be recognized as primary agents of global justice and duty-bearers of shared extraterritorial obligations, including global obligations. Would this necessarily entail the decline of the state? The recognition of the agency and shared obligations of other global actors would change the alignment of forces in the global arena and abolish the state’s monopoly as the primary agent of justice. This transition from a state-centered to a human-centered world order would not, however, displace the weighty role of the state. Instead, the state would be transformed into a kind of human rights-based political union. Indeed, the proposed regime would strengthen the role of the state, to the extent that it expands the state’s human rights obligations beyond its territory and enhances the state’s accountability for violations of extraterritorial obligations.

C. Two Types of Extraterritorial Obligations

This Section intends to differentiate the main types of extraterritorial obligations. Legal and political philosophy and human rights law use a variety of normative bases for attributing extraterritorial obligations to various actors.

¹⁸² CLAPHAM, *supra* note 25, at 7.

¹⁸³ *Id.*

Political philosophers David Miller and Charles Beitz argue that, although each principle for allocating human rights obligations may seem quite plausible by itself, none can adequately embrace all types of transnational obligations of all global actors.¹⁸⁴ Thus, “a multi-principle theory” that harmonizes different normative bases should be formulated, and an order for applying these bases should be defined.¹⁸⁵ Following this advice, this Section considers major grounds for extraterritorial human rights obligations and determines their interrelation and hierarchy.

The primary criterion applied for distinguishing between various types of extraterritorial obligations in legal literature and practice is the possibility of establishing a causal link between acts/omissions of various actors and human rights abuses.¹⁸⁶ On this basis, the Maastricht Principles classify two main types of extraterritorial obligations: (1) “obligations relating to the acts and omissions of a State” affecting the enjoyment of human rights abroad; and (2) “obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally.”¹⁸⁷ The obligations of the first type are remedial responsibilities for a negative effect on the enjoyment of socio-economic rights worldwide. A serious socio-economic deprivation of individuals having no secure access to basic rights (when the harm cannot be attributed to any particular actors or institutions) gives rise to extraterritorial obligations of the second type—in other words, to global human rights obligations. Thus, the Maastricht Principles combine various normative bases for attributing extraterritorial obligations into two large categories—those relating to (1) cases where causal links between acts/omissions of actors and human rights abuses can be established (for example, historical injustice, caused harm, domination, effective control, exploitation, misuse of shared natural resources); and (2) cases where such links cannot be found (for example, solidarity, capacity to assist, and ability to reform the international order)—without specifying the difference between various normative bases within each of these categories. This Section continues with an analysis of these two types of obligations.

¹⁸⁴ See David Miller, *Distributing Responsibilities*, 9 J. POL. PHIL. 453, 464 (2001); CHARLES R. BEITZ, THE IDEA OF HUMAN RIGHTS 170–71 (2009).

¹⁸⁵ Though Miller focuses on remedial transnational responsibilities, his conception may be used for attributing extraterritorial obligations of a non-remedial kind as well. He formulates a multi-principle conception that combines four principles—causal responsibility, moral responsibility, capacity, and community—of allocating remedial responsibilities. See Miller, *supra* note 184, at 464.

¹⁸⁶ It is “legal” but not “factual” or “moral” causality that is relevant in this context. See Tony Honoré, *Causation in the Law*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Zalta et al. eds., 2010).

¹⁸⁷ ETO Consortium, *supra* note 7 (principle 8 of the Maastricht Principles).

According to Miller's important observation, the justificatory bases underlying these two major types of extraterritorial obligations—which he terms “backward-looking” and “forward-looking” theories¹⁸⁸—concentrate on different subjects: the human rights violators and the victims, respectively. Relatedly, they concern two different questions: “Who is responsible for a human right abuse?” and “Who is in a better position to assist the victims of human right violations?”¹⁸⁹ Miller rightly argues that none of these theories is persuasive or sufficient in isolation. While assigning obligations to particular perpetrators, “backward-looking” theories do not necessarily guarantee that victims will receive an adequate remedy and compensation when perpetrators are incapable of providing them, especially when urgent measures are required. Perpetrators are not always the best problem-solvers. Though “backward-looking” theories claim that an unjust global institutional structure should be changed,¹⁹⁰ they lack reasons for demanding the creation of a new regulatory and institutional framework necessary for the realization of the human right to a just global order. At the same time, a weakness of the “forward-looking” account concerns its ignorance regarding how actors responsible for human rights violations should be held accountable. It is both important to protect victims and improve the global institutional order, as well as to hold perpetrators accountable for their violations of basic socio-economic rights and prevent future abuses. On this premise, a balance between the “backward-looking” and “forward-looking” approaches should be sought, and the right sequence in the application of remedial and global obligations should be determined.¹⁹¹

Remedial extraterritorial obligations and global obligations are *simultaneous* obligations that frequently overlap.¹⁹² The simultaneity of these obligations means that they cannot be mutually discharged. Compensation for harm caused does not relieve actors of their global obligations to realize basic socio-economic rights universally. In the same vein, implementing global obligations (for example,

¹⁸⁸ Miller, *supra* note 184, at 465–66. Different terminology is used in literature to describe these conceptions: “deontological” and “consequentialist” (Roland Pierik); primary and secondary (Stefan Gosepath); retrospective compensatory and perspective distributive (Onora O'Neill); contribution-based and assistance-based (Christian Barry & Gerhard Øverland). Roland Pierik, *supra* note 121, at 56; O'Neill *supra* note 123; Stefan Gosepath, *Deprivation and Institutionally Based Duties to Aid*, in DOMINATION AND GLOBAL POLITICAL JUSTICE. CONCEPTUAL, HISTORICAL, AND INSTITUTIONAL PERSPECTIVES 257 (Barbara Buckinx et al. eds., 2015).

¹⁸⁹ Miller reduces global obligations to obligations of assistance, while this Article demonstrates that the area of global obligations is much wider. See Miller, *supra* note 184.

¹⁹⁰ See, for example, WORLD POVERTY, *supra* note 43, at 118–22.

¹⁹¹ Miller himself is rather a supporter of the priority of a “forward-looking” theory over the “backward-looking.” Miller, *supra* note 184, at 461.

¹⁹² See De Schutter et al., *supra* note 15, at 1101.

assisting the poor or undertaking human rights impact assessments (HRIAs)) does not exempt actors from their remedial responsibility for the extraterritorial human rights violations they have caused.

At the same time, remedial responsibilities should not be replaced by global obligations. For example, the realization of remedial responsibilities to compensate for harm should precede the implementation of global obligations to assist.¹⁹³ Human rights organizations and activists have documented many cases in which global players have not recognized their responsibility for extraterritorial violations of human rights and cannot be held legally accountable in the absence of appropriate mechanisms.¹⁹⁴ Meanwhile, these players trumpet their voluntary “assistance” to the global poor, which is very modest compared to the harm they have caused. Injustice, immorality, and negative consequences of these practices for the global poor have been convincingly demonstrated by a wide range of experts.¹⁹⁵ Compensation to victims for harm should not be given under the guise of “help.”¹⁹⁶ Victims have the right to the truth about human rights violations that should also be guaranteed in the extraterritorial context.¹⁹⁷

Extraterritorial obligations of one type may arise from the non-fulfillment of the obligation of the other type. For example, a refusal by the responsible actors to compensate for harm caused may be a basis for other actors’ obligation to act for the realization of the rights of the affected individuals (to protect them or provide assistance). A failure to fulfill global obligations, in turn, may be a basis for an obligation to compensate the injured individuals and/or other actors who have provided assistance to the victims.

¹⁹³ In certain cases (when urgent help to the victims is necessary; or the responsible actors are unable to provide compensation; or if the compensation is not provided in full and is insufficient to guarantee the minimum socio-economic conditions of a decent life), remedial responsibilities of the actors involved in extraterritorial human rights violations to compensate victims for the harm caused by them may initially be performed by third parties in the form of global assistance, with the consequent reimbursement of the costs of the provided assistance. See Pribytkova, *supra* note 78, at 262.

¹⁹⁴ For examples of these practices, see COOMANS & KÜNNEMANN, *supra* note 154.

¹⁹⁵ See, for example, Thomas W. Pogge, “Assisting” the Global Poor, 13 THE PROCEEDINGS OF THE TWENTY-FIRST WORLD CONGRESS OF PHILOSOPHY 189 (2007).

¹⁹⁶ In case of human rights violation, harmful activities must be immediately stopped. See ETO Consortium, *supra* note 7 (principles 13 & 14 of the *Maastricht Principles*); Olivier De Schutter, Report of the Special Rapporteur on the Right to Food, Guiding principles on Human Rights Impact Assessments of Trade and Investment Agreements, ¶ 3, U.N. Doc. A/HRC/19/59/Add.5 (2001).

¹⁹⁷ ETO Consortium, *supra* note 7 (principle 38 of the *Maastricht Principles*).

D. Obligations to Respect, Protect, and Fulfill Socio-Economic Rights Universally

Contemporary legal philosophy and international human rights law apply a tripartite theory of human rights obligations that distinguishes between obligations to *respect*, *protect*, and *fulfill*. This Section will discuss which of these obligations are owed by various actors.

The tripartite theory of human rights obligations successfully overcomes the classic dichotomy of positive and negative duties, while demonstrating that each human right gives rise to both negative and positive obligations. For example, Shue made a significant contribution to the development of the tripartite theory by demonstrating that there are three kinds of duties corresponding to every human right, including socio-economic rights: duties to avoid depriving, to protect from deprivation, and to aid the deprived.¹⁹⁸ Following the tripartite theory, the CESCR distinguishes between obligations to respect, protect, and fulfill (facilitate, provide, and promote) corresponding to socio-economic rights.¹⁹⁹

It is disputed whether all global actors can be bearers of all three types of duties. Current commentary and practice are highly skeptical about extending the responsibility regimes of IGOs, NSAs, and individuals beyond obligations to respect.²⁰⁰ This Article defends the position that all actors should possess certain global obligations to respect, protect, and fulfill socio-economic rights.

First, all global actors should *respect* socio-economic rights. In other words, they should avoid causing harm or creating “a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially.”²⁰¹ The International Law Commission’s Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, the CESCR’s Comments, and the Maastricht Principles provide that states and other actors should cooperate in order to implement their general obligations to respect socio-economic rights internationally.²⁰² The duty to avoid causing harm is a legal basis for the obligations

¹⁹⁸ See SHUE, *supra* note 43, at 60.

¹⁹⁹ On the evolution of the tripartite theory, see MAGDALENA SEPÚLVEDA, THE NATURE OF THE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 157 (2003). On the application of the theory to obligations of international assistance and cooperation, see Sepúlveda, *supra* note 11.

²⁰⁰ From Shue’s point of view, various actors are bound by different combinations of obligations corresponding to basic socio-economic rights: while duties to avoid depriving bind all actors (individuals and social institutions), duties to protect and to aid should only be implemented by special social institutions. See SHUE, *supra* note 43, at 60.

²⁰¹ See ETO Consortium, *supra* note 7 (principle 13 of the Maastricht Principles).

²⁰² See International Law Commission, *Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities*, art. 4 (2001); CESCR Gen. Comment No. 14, *supra* note 130, at ¶ 39; CESCR Gen.

to undertake *ex ante* HRIAs and human rights due diligence (HRDD) as tools of identifying and measuring potential effects of multiple actors' acts/omissions on the enjoyment of socio-economic rights.²⁰³ Both (potential) victims and citizens of a home state have the right to demand that HRIAs and HRDD be conducted and to participate in them.²⁰⁴

Second, the CESCR recognizes states' obligations to *protect* socio-economic rights abroad.²⁰⁵ According to the Maastricht Principles, states have separate and joint obligations to regulate and influence the conduct of individuals and NSAs—including TNCs—in order to prevent their abuses of human rights extraterritorially. The obligations to protect also include measures to hold violators accountable, and to ensure an effective remedy for victims.²⁰⁶ As Shue suggests, duties to protect comprise interactional obligations to enforce duties to respect, as well as institutional obligations to create and maintain efficient national and international mechanisms (including accountability bodies) necessary for the realization of obligations to protect.²⁰⁷ Not just states, but also IGOs and NSAs should take an active role in implementing obligations to protect,²⁰⁸ in particular creating non-judicial mechanisms as well as conducting *ex post* HRIAs.²⁰⁹

Third, global *obligations to fulfill* socio-economic rights combine obligations to *facilitate*, *provide*, and *promote*.²¹⁰ Extraterritorial obligations to *facilitate* require creating and maintaining a global institutional scheme enabling individuals to enjoy their basic socio-economic rights worldwide. Extraterritorial obligations to

Comment No. 15, *supra* note 130, at ¶ 31; CESCR Gen. Comment No. 19, *supra* note 130, at ¶ 53; ETO Consortium, *supra* note 7 (principle 19 of the Maastricht Principles).

²⁰³ See ETO Consortium, *supra* note 7 (principle 14 of the Maastricht Principles); U.N. Guiding Principles, *supra* note 16, at 15–23 (principles 15, 17–21).

²⁰⁴ See Alexandra Eberhard et al., *Human Rights Impact Assessments: Human Rights Clinic Report* (2015), <http://perma.cc/R862-RWWH>.

²⁰⁵ See CESCR Gen. Comment No. 14, *supra* note 130, at ¶ 39; CESCR Gen. Comment No. 15, *supra* note 130, at ¶ 33 (2003); CESCR Gen. Comment No. 19, *supra* note 130, at ¶ 54 (2008).

²⁰⁶ See ETO Consortium, *supra* note 7 (principles 23–27 of the Maastricht Principles).

²⁰⁷ See SHUE, *supra* note 43, at 62; see also Alston, *supra* note 137, at ¶ 6.4.

²⁰⁸ Cf. regulation of IGOs' obligations to protect through the Maastricht Principles (principle 16) and TNCs' obligations to protect through the U.N. Norms (art. 1) (Section III.B(2) above).

²⁰⁹ For example, grievance mechanisms created by the World Bank (Inspection Panel), the UNDP and the UNEP (Stakeholder Response Mechanisms). National Contact Points established in accordance with the OECD Guidelines for Multinational Enterprises represent important non-judicial complaint procedures for individuals and communities whose human rights are violated by TNCs. See The World Bank, *How to File a Complaint (Request for Inspection)*, <http://perma.cc/NJ3J-MKP7>; UNDP, *Stakeholder Response Mechanism*, <http://perma.cc/Q3ZF-8D76>; UNEP, *UNEP's environmental, social and economic sustainability: Stakeholder response mechanism*, <http://perma.cc/KSW3-G9F7>; OECD Watch, *National Contact Points (NCPs)*, <http://perma.cc/ETL7-75TD>.

²¹⁰ See SEPÚLVEDA, *supra* note 199, at 239.

promote involve ensuring access to educational programs, knowledge, and information about socio-economic rights globally, and encouraging governments to guarantee this access at the national level. Global obligations to *provide* presuppose guaranteeing access to resources and services indispensable for leading a decent life to those who are unable to secure this access by themselves. The core international human rights instruments recognize states' global obligations to fulfill.²¹¹ This Article argues that the shared obligations to facilitate, promote, and provide bind not only states, but all members of the international community. As demonstrated in Section III.B, global obligations to fulfill have not yet received international legal recognition. However, there have been attempts to regulate various global actors' obligations to fulfill through some soft law instruments. For example, according to the Maastricht Principles, states and IGOs are bound by global obligations to fulfill socio-economic rights.²¹² Additionally, the U.N. Norms presuppose TNCs' obligations to promote and "secure the fulfilment of" human rights "within their respective spheres of activity and influence."²¹³ Although the U.N. Norms have not been accepted internationally, they exercise influence over the theory and practice of human rights.²¹⁴

Many scholars and practitioners consider obligations to respect and protect socio-economic rights territorially and extraterritorially to be *similar* and *simultaneous* obligations.²¹⁵ At the same time, they point out that extraterritorial obligations to fulfill differ from territorial obligations because (1) they are complementary (or subsidiary) in respect to territorial obligations, and (2) they only bind those actors that are "in a position to assist."²¹⁶ This view rests on the

²¹¹ See UDHR, *supra* note 2, at arts. 22, 28. ICESCR, *supra* note 27, at arts. 2, 11. The CESCR acknowledges that global obligations of cooperation and assistance in the realization of socio-economic rights, in particular related to key components of the right to an adequate standard of living—the rights to adequate food, water, sanitation, housing, and health—are legal obligations of states (see Section IV.D below).

²¹² ETO Consortium, *supra* note 7 (principles 16, 28–35 of the Maastricht Principles).

²¹³ U.N. Norms, *supra* note 170, at art. 1. Due to their sphere of competence, TNCs are capable of securing access to objects of basic socio-economic rights (such as food, water, essential medication, books and other educational materials and programs, and computer technologies). Moreover, TNCs can use their influence in international decision-making, norm-setting, and institution-designing processes to contribute to creating and maintaining a just global order, in which the universal realization of socio-economic rights is guaranteed.

²¹⁴ See Section III.B(2) above.

²¹⁵ Vandenberghe, *supra* note 21, at 241; KHALFAN, *supra* note 9, at 331; Wouter Vandenhoe & Wolfgang Benedek, *Extraterritorial Human Rights Obligations and the North-South Divide*, in GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW 337 (Malcolm Langford et al. eds., 2013).

²¹⁶ KHALFAN, *supra* note 9, at 331; Vandenhoe & Benedek, *supra* note 215, at 338.

misunderstanding that global obligations are always distributive and interactional obligations of assistance. However, giving concurrent consideration to the institutional and relational aspects of global obligations allows for a different conclusion. Global institutional obligations to fulfill are primary and simultaneous obligations. The degree of implementation of global obligations in a specific context is dependent on actors' capacities, but availability of resources does not affect the presence or absence of global obligations.²¹⁷ Members of the international community, lacking sufficient resources, are not exempt from contributing to implementing global obligations. Moreover, they are obliged to cooperate in order to find and multiply available means and resources. Hence, a "position to assist" is not an appropriate normative basis for allocating global obligations.²¹⁸

E. Summary

The recognition, conceptualization, and implementation of extraterritorial obligations of multiple actors is an important precondition for the "quantum leap" from a regime of international justice to one of global justice and from a state-centered to human-centered global order. This transition would not diminish the important role of the state, but rather mark its reformation into a human rights-based political union (Section III.A). The state and civil society should remain two important "channels" for representing interests and protecting human rights of individuals in the global domain. Two types of extraterritorial obligations—remedial extraterritorial responsibilities and global obligations—are simultaneous, frequently overlap, and may arise from the non-fulfillment of obligations of the other type (Section III.C). All global actors—states, IGOs, NSAs, and individuals—should be recognized as primary agents of global justice (Section III.B) and duty-bearers of global obligations to respect, protect, and fulfill socio-economic rights (Section III.D).

IV. GLOBAL HUMAN RIGHTS OBLIGATIONS

This Section outlines a concept of global human rights obligations and teases out the major inconsistencies of traditional views on such obligations (Section IV.A). To explain the nature and content of global obligations, it defends basic equality as their foundational principle (Section IV.B), and, on that ground, considers what human rights obligations should be ensured in the domains of global relational (Section IV.C) and distributive (Section IV.D) justice.

²¹⁷ See Limburg Principles, *supra* note 130, at principle 23; Arjun K. Sengupta, Study on the Current State of Progress in the Implementation of the Right to Development, ¶ 25, U.N. Doc. E/CN.4/1999/WG.18/2 (June 27, 1999).

²¹⁸ For details, see Pribytkova, *supra* note 78, at 289.

A. Common Prejudices about Global Obligations

Unlike remedial extraterritorial obligations that presuppose a causal link between multiple actors' acts or omissions and individuals' inability to enjoy socio-economic rights, global obligations bind subjects (right-holders and duty-bearers) that are not involved in any legally relevant causal relations.

The legal theory of global obligations is in its embryonic stage. This Article proceeds to delineate its main contours, starting from common prejudices about global obligations, which this Section aims to correct. Some of these prejudices are expressed in the Maastricht Principles, which are still the only (soft) law document that has acknowledged states' global obligations and represent the prevailing interpretation of global obligations. As mentioned in Section I, the concept of global obligations is not sufficiently developed in the Maastricht Principles and the comments to them, as they pay more attention to remedial extraterritorial obligations. The interpretation they offer is limited in several respects: (1) they concentrate only on states' extraterritorial obligations (though claiming to be applicable to IGOs as well), whereas global obligations of NSAs and individuals fall beyond their scope; (2) they fail to overcome a state-centered view on global obligations; (3) they leave open issues surrounding a normative basis for, and status of, global obligations; and (4) they treat global obligations as obligations of conduct rather than obligations of result, which leads to inadequate understandings of their content and scope. This Section takes a closer look at these lacunae and ways to fill them.

First, as demonstrated, the bearers of global obligations are not only states but also IGOs, NSAs, and individuals. The Maastricht Principles should, therefore, be supplemented by instruments regulating direct global obligations of actors other than states.²¹⁹ In particular, an important role should be played by the Legally Binding Instrument.

Second, the Maastricht Principles fail to overcome a state-centered view of global obligations. This results not only from their focus on the duties of the state and IGOs, thereby bypassing obligations of NSAs and individuals. The state-centered approach manifests itself in the first instance through the Maastricht Principles' emphasis not on ensuring the enjoyment of socio-economic rights by individuals, but on enabling states to realize their territorial obligations. For example, it is states rather than individuals that are subjects of a legitimate request

²¹⁹ On implementing the Maastricht Principles to regulate activities of other actors, see Ashfaq Khalfan & Ian Seiderman, *Extraterritorial Human Rights Obligations: Wider Implications of the Maastricht Principles and the Continuing Accountability Challenge*, in CHALLENGING TERRITORIALITY IN HUMAN RIGHTS LAW: FOUNDATIONAL PRINCIPLES FOR A MULTI DUTY-BEARER HUMAN RIGHTS REGIME (Wouter Vandenhoe ed., 2015).

for, and recipients of, international assistance.²²⁰ A shift from a state-centered to a human-centered global order requires the recognition of individuals as major right-holders, which have justified claim-rights to social support and global assistance as well as claim-rights to just local and global basic structures that are directed to their own governments, other global actors, and the international community as a whole.²²¹

Third, the Maastricht Principles do not specify a legal basis for global obligations.²²² This, in turn, leaves open the question of the status of global obligations. Principle 8 defines the legal basis of the obligations of a global character quite broadly: global obligations are “set out in the Charter of the United Nations and human rights instruments.”²²³ This Article develops an idea that global obligations are human rights obligations based on two fundamental entitlements enshrined in the UDHR: (1) the entitlement “to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”; and (2) the entitlement “to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”²²⁴ The latter entitlement specifies the institutional nature of obligations and is an integral part of the former. They both demonstrate the dual nature of global human rights obligations, which include interactional obligations to realize socio-economic rights universally and institutional obligations to create and maintain a just global order.²²⁵ Though the right to a just global order is not explicitly enshrined in the ICESCR and the CRC, the CESCR and the U.N. CRC recognize that their goals include promoting a fair global structure necessary to ensure Conventions rights. With these aims, they call for removing structural impediments to a just international order and for creating the enabling environment (both a normative

²²⁰ See ETO Consortium, *supra* note 7 (principles 33–35 of the Maastricht Principles).

²²¹ See TAN, *supra* note 28, at 71.

²²² See Vandenhoe, *supra* note 6. It is possible, however, that this task was intentionally reserved for comments that can be considered an authentic interpretation, since they are made by the authors of the Maastricht Principles. See De Schutter et al., *supra* note 15.

²²³ ETO Consortium, *supra* note 7 (principle 8 of the Maastricht Principles).

²²⁴ UDHR, *supra* note 2, at arts. 22, 28.

²²⁵ Cf. “the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.” Declaration on the Right and Responsibility, *supra* note 133, art. 18.3.

and institutional structure) necessary for the universal realization of basic socio-economic rights.²²⁶

Fourth, the Maastricht Principles treat global obligations as obligations of conduct, addressing actors' efforts and processes, rather than obligations of result, which focus on the achievements and outcomes of actors' activities.²²⁷ In particular, they describe global obligations as obligations to "take action," "take steps," "cooperate," "assist," "regulate," and "influence" rather than obligations to "realize," "create," "provide," or "ensure."²²⁸ Thus, obligations of international cooperation and assistance, requiring only the undertaking of certain measures rather than the achievement of certain goals (namely, the universal implementation of basic socio-economic rights and the creation of a just global order) come to the fore. The tendency to interpret global obligations as obligations to cooperate and assist also prevails in contemporary legal discourse²²⁹ and practice.²³⁰

This tradition is rooted in the U.N. Charter's statement that the U.N.'s ultimate purposes are developing "friendly relations among nations" and achieving peaceful international co-operation,²³¹ which are regarded as obligations

²²⁶ CESCR Gen. Comment No. 24, *supra* note 155, at ¶ 37 (Aug. 10, 2017); Comm. on the Rights of the Child, Gen. Comment No. 24, Children's Rights in Juvenile Justice, U.N. Doc. CRC/C/GC/24, ¶ 29 (Sept. 18, 2019); *see also* Limburg Principles, *supra* note 130, at principle 30.

²²⁷ For this classification, see Rüdiger Wolfrum, *Obligation of Result Versus Obligation of Conduct: Some Thoughts About the Implementation of International Obligations*, in LOOKING TO THE FUTURE: ESSAYS ON INTERNATIONAL LAW IN HONOR OF W. MICHAEL REISMAN 363 (Mahnoush H. Arsanjani et al. eds., 2010); Philip Alston & Gerard Quinn, *The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights* 9 HUM. RTS. Q. 156 (1987); SEPÚLVEDA, *supra* note 199, at 184; SKOGLY, *supra* note 11, at 32–34. Guy S. Goodwin-Gill notes that formulating obligations as those of conduct prevails in international relations, whereas domestic duties are more frequently recognized as obligations of results. *See* Guy S. Goodwin-Gill, *Obligations of Conduct and Result*, in THE RIGHT TO FOOD 112 (Philip Alston & Katarina Tomaševski eds., 1984).

²²⁸ *See, for example*, ETO Consortium, *supra* note 7, (Parts III–V of the Maastricht Principles). Principle 8 defines global obligations as obligations "to take action, separately, and jointly through international cooperation, to realize human rights universally". Institutional global obligations are also formulated as obligations of conduct: "States must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment." *Id.* at principle 29.

²²⁹ *See for example*, Sepúlveda, *supra* note 11; KARIMOVA, *supra* note 19; VANDENBOGAERDE, *supra* note 6.

²³⁰ *See, for example*, Comm. on Econ., Soc. and Cultural Rights, Gen. Comment No. 4, The Right to Adequate Housing (art. 11(1) of the Covenant), ¶¶ 10, 13, 19, U.N. Doc. E/1993/23 (Dec. 13, 1991) [hereinafter CESCR Gen. Comment No. 4]; CESCR Gen. Comment No. 12, *supra* note 130, at ¶¶ 36, 38, 40; CESCR Gen. Comment No. 14, *supra* note 130, at ¶¶ 38, 40, 45, 63; CESCR Gen. Comment No. 15, *supra* note 130, at ¶¶ 30–38.

²³¹ "International co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for

of *result*. Other goals, including the realization of human rights, are, therefore, subordinate to these ultimate purposes. The reasons for this interpretation are quite understandable: the U.N. Charter was signed after the end of the Second World War, on June 26, 1945. Hence, the Charter embodied the idea of peaceful cooperation between countries, which was a fundamental international aim in the post-War context. More than seventy years later, however, not merely peaceful cooperation but also the creation of a just global order indispensable for the realization of human rights should be recognized as an essential purpose of (members of) the international community.²³²

The ICESCR also interprets global obligations as duties of conduct.²³³ The CESCR, however, comments that general legal obligations corresponding to the socio-economic rights recognized in the ICESCR include both duties of conduct and duties of result. Although global obligations corresponding to socio-economic rights are supposed to be implemented progressively, they aim at achieving concrete results—the full realization of socio-economic rights universally,²³⁴ and some global obligations are obligations of *immediate* effect.²³⁵

This Article suggests a new classification of global obligations. Under this classification, global obligations in their interactional and institutional aspects comprehend both duties of result (to realize socio-economic rights necessary for the enjoyment of a decent standard of living worldwide and to create a just global institutional structure indispensable for their realization) and duties of conduct (to cooperate and to assist in the implementation of socio-economic rights).²³⁶

As mentioned in the previous Section, another common prejudice is the belief that global obligations are secondary and consequent obligations, the

fundamental freedoms for all without distinction as to race, sex, language, or religion.” U.N. Charter, art. 1, ¶¶ 2–3. *See also* arts. 55–56.

²³² *See, for example*, U.N., The Three Pillars of the United Nations, <http://perma.cc/68YV-7XZC>.

²³³ “Each State Party to the present Covenant *undertakes to take steps*, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” ICESCR, *supra* note 27, at art. 2 ¶ 1 (emphasis added).

²³⁴ Comm. on Econ., Soc. and Cultural Rights, Gen. Comment No. 3, The Nature of States Parties’ Obligations (art 2, ¶ 1 of the Covenant), ¶ 1, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter CESCR Gen. Comment No. 3]; Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, *supra* note 153, at ¶ 8.

²³⁵ Applying the CESCR Gen. Comment No. 3 to extraterritorial obligations, those of immediate effect are the following: aimed to eliminate discrimination; to “take steps,” in particular, to cooperate and assist (¶ 2); minimum core obligations (¶ 10); relatively low-cost targeted programmes for vulnerable individuals (¶ 12); obligations corresponding to socio-economic rights that are not subject to progressive realization (¶ 5). CESCR Gen. Comment No. 3, *supra* note 234.

²³⁶ This Article focuses predominantly on global obligations of result; for a detailed analysis of global obligations of conduct, see Pribytkova, *supra* note 78, at 222–333.

implementation of which depends on whether and to what extent home states have realized their territorial obligations.²³⁷ This position, however, is incorrect if one considers institutional obligations corresponding to the human right to a just global order, which are primary and simultaneous obligations of multiple actors. This means that their realization is not related to the ability of a home state to fulfill its territorial human rights obligations and that they should be implemented in parallel to territorial obligations. Global institutional obligations include the obligations: (1) to elaborate a normative framework regulating extraterritorial obligations of multiple actors; (2) to create and maintain a system of institutions necessary for removing structural impediments to a just global order and for the implementation of global obligations; and (3) to develop monitoring and accountability bodies, especially individual complaint mechanisms, at regional and international levels to enforce effective and affordable remedies for socio-economic rights violations universally.

Finally, global obligations are often unreasonably viewed predominantly as duties of distributive justice.²³⁸ The following analysis seeks to discredit this prejudice.

B. Basic, Relational, and Distributive Equality

To explain the nature and content of global obligations, this Section turns to the concept of basic equality and its relational and distributive implications. As Beitz rightly notes, “cosmopolitanism of any sort rests on a fundamental commitment to treat all persons in some relevant sense as equals.”²³⁹ Basic equality, which demands respect for and treatment of all individuals as equals in human dignity and human rights, is a normative basis for obligations to implement human rights universally. This Section demonstrates that it is the entitlement to basic equality that is the actual foundation of global obligations in the domains of relational and distributive justice.

It is possible to distinguish between three interrelated interpretations of equality: (1) *basic equality* (or *equality of status*) that proceeds from the assumption that people are equal holders of dignity and human rights;²⁴⁰ (2) *relational equality* that presupposes the relation of persons to each other as equals in particular

²³⁷ See, for example, BEITZ, *supra* note 184, at 106.

²³⁸ See, for example, BEITZ, *supra* note 43, at 125–53; WORLD POVERTY, *supra* note 43, at 43–45; TAN, *supra* note 28, at 19.

²³⁹ BEITZ, *supra* note 43, at 208.

²⁴⁰ For various conceptions of basic equality or equality of status, see David Miller, *Equality and Justice*, 10 *RATIO* 222 (1997); Richard J. Arneson, *Egalitarianism*, in *STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (2013), <http://perma.cc/UCY4-6PZR>; WALDRON, *supra* note 33.

contexts;²⁴¹ and (3) *distributive equality* that requires individuals to have equal amounts of something.²⁴² Important aspects of these understandings of equality and how they relate to global obligations are outlined below.

First, as Waldron shows, *basic equality* points to a special status of all persons as members of humanity that is indivisible into “sorts” and “ranks.”²⁴³ Basic equality is justified as both a thin (political) and thick (comprehensive) concept. The political idea of basic equality is at the core of the conception of universal human rights and has found its embodiment in the International Bill of Human Rights. In this sense, Dworkin defended a fundamental “right to treatment as an equal,” or the “right to equal concern and respect in the design and administration of the political institutions that govern them,” as opposed to the derivative “right to equal treatment.”²⁴⁴ This right should serve as a principle for ordering institutions in both local and global domains. As a comprehensive idea, basic equality is rooted in various philosophical, religious, moral, and cultural doctrines from different epochs and schools of thought.²⁴⁵ For example, in *A Writer’s Diary*, Fyodor Dostoevsky articulated foundational intuitions of basic equality as follows: “I am in no way beneath thee in moral worth and . . . , *as a person*, I am equal to thee.”²⁴⁶

Equality of status has several important features. First, it belongs to all human beings (*universality*). Second, all persons are entitled to a status of moral subjects irrespective of their social or financial state (*unconditionality*). Third, no individual can be deprived, nor deprive themselves, of this status, even if their troubled financial or social state is a result of their own choices (*inalienability*). Finally, it presupposes all individuals’ ability to participate in all core social,

²⁴¹ Different approaches to relational equality are suggested in Elizabeth Anderson, *What Is the Point of Equality?* 109 *ETHICS* 287 (1999); Samuel Scheffler, *The Practice of Equality*, in *SOCIAL EQUALITY: ESSAYS ON WHAT IT MEANS TO BE EQUALS* 21 (Carina Fourie et al. eds., 2015); Forst, *supra* note 44; THOMAS SCANLON, *WHY DOES INEQUALITY MATTER?* (2018).

²⁴² For an analysis of the difference between equality of status and distributive equality, see Elena Pribytkova, *A Decent Social Minimum as a Matter of Justice*, in *ETHICAL ISSUES IN POVERTY ALLEVIATION* 43 (Helmut Gaisbauer et al. eds., 2016).

²⁴³ WALDRON, *supra* note 33, at 6.

²⁴⁴ See DWORKIN, *supra* note 84, at 218, 273; RONALD DWORKIN, *SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY* 411 (2002).

²⁴⁵ The idea of basic moral equality can be found in Rawls’ classification of two concepts of equality: “equality as it is invoked in connection with the distribution of certain goods, some of which will almost certainly give higher status or prestige to those who are more favored, and equality as it applies to the respect which is owed to persons irrespective of their social position.” Rawls believed that the second type of equality, basic equality, should be prioritized over distributive equality. RAWLS, *supra* note 37, at 511.

²⁴⁶ DOSTOEVSKY, *supra* note 1, at 512. Dostoevsky can be considered the founder of moral-religious tradition in Russian legal philosophy.

political, and cultural institutions and practices of (global) society that influence their human rights, and the enjoyment of secure access to shared material and intellectual values (*ability to be full-fledged members of a global society*). Basic equality is a fundamental entitlement of a person as a member of human society irrespective of their role in a family, small social groups, or the state.

Grounded in cosmopolitan intuitions, human rights require that basic equality transcends borders and is guaranteed to all individuals of the world.²⁴⁷ The idea of basic equality should guide extraterritorial relations, global norm-setting, and institutional design.²⁴⁸ Since an extreme degree of inequality in relationships between individuals and within distributive institutional schemes worldwide casts doubt on the very possibility of the enjoyment of human dignity and human rights, basic equality should precede and underpin spheres of relational and distributive justice.

Second, *relational equality* approaches are built on opposition to distributive egalitarianism.²⁴⁹ Defenders of these approaches seek to prove that equality is not a distributive value but rather a relational one.²⁵⁰ In addition, they doubt that distributive equality is valuable by itself. The value of any particular distributive guarantee is determined based upon its ability to serve as a means to achieve a society of equals.²⁵¹

How do basic and relational equality interrelate? On the one hand, basic equality and relational equality are closely interconnected²⁵²—they both demand that individuals are treated and regarded as equals, in other words, with equal concern and respect.²⁵³ Extremely unfair relations that divide people into classes and make them feel like different kinds of human beings are incompatible with basic equality. In this sense, the contemporary normative and institutional global order favoring powerful actors and residents of rich countries at the cost of the vast majority of the world's population—while causing discrimination, social exclusion, and marginalization of the latter—infringes on both relational and basic equality.

²⁴⁷ TAN, *supra* note 28, at 1, 6, 10.

²⁴⁸ Pogge, *supra* note 28, at 49.

²⁴⁹ WALDRON, *supra* note 33, at 11.

²⁵⁰ See Anderson, *supra* note 241, at 313; Scheffler, *supra* note 241, at 22; SCANLON, *supra* note 241, at 1-10.

²⁵¹ In view of this, “the relevant question in thinking about equality and distribution, is not ‘What is the currency of which justice requires an equal distribution?’ It is rather ‘What kinds of distributions are consistent with the ideal of a society of equals?’” Scheffler, *supra* note 241, at 22.

²⁵² Some researchers do not make a clear distinction between basic equality and relational equality. Drawing the line between them allows casting light upon the nature of various types of global obligations.

²⁵³ KASPER LIPPERT-RASMUSSEN, RELATIONAL EGALITARIANISM: LIVING AS EQUALS 70 (2018).

On the other hand, basic equality includes not only a relational (comparative) component but also an absolute one, insofar as it proceeds from the recognition of human dignity and human rights. Acknowledgement of an absolute value of a person excludes so-called “leveling down” (equalization below a certain minimally decent threshold).²⁵⁴ Relational equality, however, is *per se* fully compatible with such leveling down: after all, individuals can consider each other equal members of society even without having notions of dignity and human rights, or even when outright rejecting these ideas (consider, for example, people in a primitive society or a band of robbers). Therefore, an essential demand that basic equality imports to the sphere of relational justice is to follow this absolute standard of human-centricity—the recognition of human dignity and human rights.²⁵⁵ In this respect, basic equality represents the core principle of a global society of equals, which is to be concretized in different contexts through the application of the norms of relational justice.

Third, *distributive equality* requires persons to have equal amounts of something (such as resources, social goods, income, or capabilities). Although equality of status is interrelated with distributive equality, there is no direct connection between them.²⁵⁶ Equal distribution of socially valuable goods or resources is not a guarantee that people are regarded and treated as equals; and contrariwise, even unequal distribution schemes do not prevent members of society from enjoying equality of status.²⁵⁷ At the same time, distributive inequalities tend to translate into both basic and relational inequality.²⁵⁸

The enjoyment of basic equality is impossible in the context of extreme poverty. Hence, the current global order that causes (or allows) thousands of deaths from poverty every day contradicts the very idea of equality of status. Moreover, empirical evidence reveals that extreme distributive inequality negatively affects the enjoyment of human dignity and fundamental human

²⁵⁴ On levelling down objection, see RAZ, *supra* note 91, at 227, 229, 235; Harry Frankfurt, *Equality as a Moral Ideal*, 98 ETHICS 21 (1987).

²⁵⁵ Lippert-Rasmussen shows that even “extremely hierarchical social relations” may be consistent with treating each other as moral equals, under conditions of respect for human dignity and human rights. LIPPERT-RASMUSSEN, *supra* note 253.

²⁵⁶ See Pribytkova, *supra* note 242, at 46.

²⁵⁷ See Arneson, *supra* note 240.

²⁵⁸ Political thinker Michael Walzer provides an excellent analysis of the conversion of inequalities between various spheres of justice. He demonstrates that those having the edge (greater wealth or higher power) in one area intend to utilize them for their domination in other areas as well, while the worse off in one domain are also frequently disadvantaged in other domains. See generally SPHERES OF JUSTICE, *supra* note 42. Miller convincingly argues that Walzer’s idea should be read as an idea about status. See David Miller, *Complex Equality*, in PLURALISM, JUSTICE, AND EQUALITY 206 (David Miller & Michael Walzer eds., 1995). On inequality penetrating all aspects of life, see also WORLD POVERTY, *supra* note 43, at 203–05.

rights.²⁵⁹ Widening inequalities of distribution facilitate the division of a global society into first-class and second-class humans, which is incompatible with basic equality.

Thus, a global distributive scheme that imposes extreme poverty undermines the grounds for equality of status, while extreme distributive inequality has severe negative consequences for both basic equality and relational equality.²⁶⁰ To achieve basic equality, the global scheme must ensure minimum guarantees of protection from poverty and extreme inequality, as well as secure access to a dignified existence, as a matter of distributive justice.²⁶¹

Understanding the differences between basic, relational, and distributive equality is essential for grasping the nature and content of global obligations. As this Section specifies, relational and distributive equality are not valuable *per se*.²⁶² Inequalities in relations (for example, hierarchical subordination of employees or military personnel) and distribution (for example, progressive taxation, positive discrimination in favor of the most vulnerable individuals and social groups, or social assistance to those in need) are morally and legally acceptable insofar as they correspond to basic equality, with its recognition of the absolute value of individuals, their human dignity and human rights. Neglect of basic equality means trampling human dignity and human rights, which cannot be justified in the modern world. It is, therefore, basic equality, and not relational or distributive equality, that serves as the foundation of relational and distributive justice.²⁶³ Basic equality is also a normative basis for global human rights obligations in the spheres of relational and distributive justice.

To summarize, global human rights obligations aim to ensure certain minimum guarantees in the domains of relational and distributive justice that are essential for the enjoyment of basic equality as a core demand of global justice. As the following Sections will demonstrate, the domain of relational justice should

²⁵⁹ For instance, the U.N. Special Rapporteur on extreme poverty and human rights, Philip Alston, provides an important overview of how extreme distributive inequalities in the global domain bring about an unfair normative and institutional order that advantages the most powerful actors and has “detrimental effects” on the enjoyment of human rights by others. Philip Alston, Report of the Special Rapporteur on extreme poverty and human rights, extreme inequality and human rights, ¶¶ 26–32, U.N. Doc. A/HRC/29/31 (2015). *See also generally* MILANOVIC, *supra* note 35.

²⁶⁰ The translatability of distributive inequalities into relational inequality is, however, indirect and contextual. *See* Miller, *supra* note 240, at 224, 237.

²⁶¹ I agree with Waldron that basic equality directly presupposes certain distributive guarantees. *See* WALDRON, *supra* note 33, at 12.

²⁶² *Cf.* SCANLON, *supra* note 241; Frankfurt, *supra* note 254.

²⁶³ For the interrelation between equality and justice, see Miller, *supra* note 23; Miller, *supra* note 240. It is necessary to clarify that the difference between institutional and interactional obligations introduced in Sections II.C and IV.A should not be associated with the difference between the domains of relational and distributive justice, each of which organizes the relationship and implementation of institutional and interactional duties in its own way.

realize global human rights obligations of multiple actors to create and maintain a just institutional structure that ensures individuals' full-fledged participation in it. A global distributive scheme should embody the minimum human rights guarantees of a dignified life (a decent social minimum) universally.

C. Global Obligations of Relational Justice

This Section addresses global obligations in the domain of relational justice aimed at improving the contemporary global order, which is structurally unjust and which severely infringes on basic equality and socio-economic rights. This order is shaped by the most powerful actors (developed states, key IGOs, and major TNCs) that exercise actual control over and benefit disproportionately from core global institutions while leaving billions in poverty. Global rules and principles governing the most significant areas of human life, including legal, economic, political, social, and cultural spheres, disparately impact the poorest individuals and societies.²⁶⁴

Global relational injustice manifests itself through rule-making and institution-designing processes in world politics, international law, trade, and finance. As the following (non-exhaustive) list of examples demonstrates, these processes violate socio-economic rights.

First, developed states dominate in the decision-making processes of international financial institutions, including the IMF and the World Bank.²⁶⁵ Despite their insistence on fidelity to human rights and the rule of law, these institutions act "outside any global good governance regime for the protection of the rights of those affected by their policies,"²⁶⁶ as evidenced by their long-standing and numerous socio-economic rights violations²⁶⁷ and the impoverishment of individuals in developing countries.²⁶⁸

²⁶⁴ See TAN, *supra* note 28, at 25.

²⁶⁵ The Bretton Woods Institutions, which predominantly represent the developed North states, have been criticized as neo-colonial institutions ignorant to the voices of developing countries. See, for example, Report of the High-Level Task Force on the Implementation of the Right to Development on its Second Meeting, ¶ 74, U.N. Doc. E/CN.4/2005/WG.18/TF/3 (2005); Linah K. Mohohlo, *A Change in Mind-Set is Needed if Aid is to Remain Relevant*, in THE DONORS' DILEMMA: EMERGENCE, CONVERGENCE AND THE FUTURE OF FOREIGN AID (Andy Sumner & Tom Kirk eds., 2014).

²⁶⁶ CLAPHAM, *supra* note 25, at 5.

²⁶⁷ See Alston's critique of the Bretton Woods Institutions as a "human rights-free zone." The World Bank and Human Rights, *supra* note 161; The Role of the IMF, *supra* note 161.

²⁶⁸ The Structural Adjustment Programmes implemented by the IMF and the World Bank provided loans to developing countries under harsh and detrimental conditions "often proved to have more adverse consequences than the initial problem itself," such as budget cuts for social services or privatization of essential state-owned resources that allowed foreign investors, especially TNCs, to become their owners. See Sachin Chaturvedi, *The Development Compact: A Theoretical Construct for South-South Cooperation*, RIS Discussion Papers, Discussion Paper # 203 4 (2016); ISSA G. SHIVJI, SILENCES

Second, the WTO's non-transparent and unfair decision-making processes are biased in favor of developed states and large TNCs and impose global rules and institutions that negatively affect the enjoyment of human rights in developing societies.²⁶⁹ Alleviating the WTO's protectionism of developed states' markets would help several hundred million people escape from poverty by themselves.²⁷⁰

Third, cases relating to extraterritorial activities of large TNCs include numerous investment projects that are carried out without conducting HRDD that involve all potential stakeholders (individuals and communities), resulting in severe violations of stakeholders' basic socio-economic rights.²⁷¹

Fourth, big pharmaceutical companies disproportionately focus on the spread of diseases in developed countries, ignoring the right to health of the global poor and allowing for millions of preventable deaths annually.²⁷²

Fifth, development assistance policies and projects implemented by Western donor-states, IGOs, international foundations, and NGOs are often used as a

IN NGO DISCOURSE: THE ROLE AND FUTURE OF NGOS IN AFRICA 14–16, 41 (2007); JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* ch. 1-2 (2002); William Easterly, *What Did Structural Adjustment Adjust? The Association of Policies and Growth with Repeated IMF and World Bank Adjustment Loans*, 76 J. DEVELOPMENT ECON. (2005); Elham Seyedsayamdost, *A World Without Poverty: Negotiating the Global Development Agenda* 75–94 (2000) (unpublished Ph.D. dissertation, Columbia University).

²⁶⁹ For example, the international intellectual property regime under the WTO TRIPS agreement violates the right to adequate food and the right to health in poor societies. The WTO treaty system practice pushes poor countries to open their markets while impeding access for their production to markets of developed states. This practice prevents the residents of developing countries from enjoying the right to a decent standard of living. See Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, 56 INT'L ORG. 339 (2002); Jagdish N. Bhagwati, *Reshaping the WTO*, 168 FAR EASTERN ECON. REV. 25 (2005); GLOBAL RESPONSIBILITY, *supra* note 13, at 139. See also *Statement of the Third World Network at the WTO Symposium on Trade and Environment and Trade and Development* (Ma. 1999), <http://perma.cc/A3AN-2KR2>.

²⁷⁰ Opening markets would allow poor countries to receive additional export earnings (according to the UNCTAD, \$700 billion annually) and gain wealth (according to Pogge, over \$100 billion annually), which is comparable to contemporary ODA rates (\$146.6 billion). See UNCTAD, *TRADE AND DEVELOPMENT REPORT IX*, 143 (1999); POLITICS, *supra* note 43, at 20; OECD Development Aid, *supra* note 114. The OECD estimates that elimination of all merchandise tariffs and reduction in trade costs by 1% would increase welfare in developing states by \$90.05 billion a year. PATRICK LOVE & RALPH LATTIMORE, *INTERNATIONAL TRADE: FREE, FAIR AND OPEN?* 60 (2009).

²⁷¹ See, for example, FIAN International, *Case Work*, <http://perma.cc/45R4-7GT4>; COOMANS & KÜNNEMANN, *supra* note 154, at 5.

²⁷² PAUL HUNT ET AL. *NEGLECTED DISEASES: A HUMAN RIGHTS ANALYSIS* (2007); Paul Hunt, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, The Right to Health, IV, U.N. Doc. A/63/263 (2008); GLOBAL RESPONSIBILITY, *supra* note 13, at 145; WORLD POVERTY, *supra* note 43, at 222–23.

means for dominating developing societies.²⁷³ Such policies and projects often fail to take into account the actual needs of the poor and are extremely inefficient, insufficient, and violate the human rights of recipients of assistance.²⁷⁴

In all of these examples, we see global institutional injustice, which manifests itself not in harmful programs of the international distribution of social goods or resources, but in the lack of institutional guarantees of the relation between individuals from developing and developed countries (acting directly or indirectly through their states or other representatives) as equals in the processes of creating global norms, policies, institutions, and practices. This global relational injustice is the cause of distributive injustice, global poverty, and extreme inequality. Such detrimental effects cannot be eliminated without the removal of their cause.

Furthermore, relational injustice distorts the allocation of jurisdiction over issues concerning global distributive justice. Most salient, perhaps, is the resistance of powerful Western states to solving problems related to global distributive injustice within the U.N., keeping them under the jurisdiction of the Bretton Woods Institutions, over which they exercise control.²⁷⁵ Ironically, it is the actors who press for a program of democratization and liberalization in developing countries that prevent these reforms in the global domain. The prevailing view is that liberal wealthy states are interested in relational justice at the cost of a distributive one.²⁷⁶ However, this seems to be true only at the local level. In the global domain, powerful states express no interest in limiting their dominance for the sake of relational justice. Instead, they prefer reducing the problem of global justice to issues of development assistance, which is interpreted not as a human rights-based obligation but as a voluntary commitment of donors.²⁷⁷

Obligations of relational justice should have priority over those of distributive justice. This would allow targeting the main efforts against global poverty and extreme inequality not only at their consequences, but also at their

²⁷³ See Gay J. McDougall, *A Decade of NGO Struggle*, 11 HUM. RTS. BRIEF 12, 15 (2004); Makau Mutua, *Human Rights International NGOs: A Critical Evaluation*, in *NGOs AND HUMAN RIGHTS: PROMISE AND PERFORMANCE* 151 (C.E. Welch, Jr. ed., 2001).

²⁷⁴ Public and private assistance programs are often carried out without involving poor individuals or their representatives and without undertaking HRIAs with the participation of the latter. Those in poverty are presumed to be helpless, irresponsible, and incapable of being full-fledged subjects, both right-holders and duty-bearers, in extraterritorial relations and agents of change. See Pribytkova, *supra* note 78, at 305–15. See also generally DAMBISA MOYO, *DEAD AID: WHY AID IS NOT WORKING AND HOW THERE IS A BETTER WAY FOR AFRICA* (2009); WILLIAM EASTERLY, *THE WHITE MAN'S BURDEN: WHY THE WEST'S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD* (2006).

²⁷⁵ See Margot Salomon, *From NIEO to Now and the Unfinishable Story of Economic Justice*, 62 INT'L & COMP. L. Q. 31, 50–51 (2013).

²⁷⁶ See TAN, *supra* note 28, at 8.

²⁷⁷ See also VANDENBOGAERDE, *supra* note 6, at 69.

cause. Under conditions of fair relations in the process of global decision-making, fair principles of distributive justice could be embedded in international norms and institutions. Moreover, as contemporary studies demonstrate, a just global institutional system that does not violate human rights of people in developing countries may be sufficient for their self-rescue from poverty.²⁷⁸

Basic equality establishes a minimum standard of justice—the recognition of equal moral value of individuals—for both local and global domains. Though basic equality does not, using Dworkin’s language, demand that individuals be treated equally, it nonetheless requires them to be treated and respected as equals, regardless of their place of birth, residence, or citizenship, by all agents of justice.²⁷⁹ A just global institutional order should enable individuals to enjoy equal status and to act as full-fledged agents in the global domain—to take part in creating and maintaining the key institutions that influence their exercising of human rights.²⁸⁰

How should individuals’ full-fledged agency be guaranteed in the global order? Section III.B(2) pointed to two main ways for individuals to be represented in the global domain: through their state and through participation in global civil society. An internationally-recognized way to exercise the right to take part in the design and administration of global institutions is political participation in the affairs of one’s state. However, this tool often fails for two reasons: the undemocratic structure of many states and the unfair global institutional scheme. In the state-centered order, the most vulnerable individuals can hardly speak on their own behalf and be heard, and are unable to directly seek assistance from the international community or hold their state and global actors accountable for violations of their human rights. Relatedly, the unfair organization of the global order prevents individuals’ full-fledged agency: first, by not taking into account the interests of individuals by major global actors in creating and implementing policies, which affect their enjoyment of human rights; and second, through the dominance of developed states over developing ones in global rule-making and institutional design. Under these conditions, the recognition of individuals’ agency in the global domain is the only way for them to assert and to realize human rights associated with their membership in humanity.

Thus, the imperative of basic equality calls for two measures in the domain of relational justice. On the one hand, it demands the recognition of individuals

²⁷⁸ See POLITICS, *supra* note 43, at 20; Thomas Pogge, *Poverty and Human Rights*, <http://perma.cc/FF8L-LMZS>.

²⁷⁹ See DWORKIN, *supra* note 84, at 218, 273.

²⁸⁰ Various versions of this right have been justified by scholars. For example, by Dworkin as the “right to equal concern and respect” in the design and administration of the institutions governing individuals, or by Rainer Forst as the right of moral persons to not just be passive recipients, but “justificatory” agents of justice. See DWORKIN, *supra* note 84, at 218, 273; DWORKIN, *supra* note 244, at 411; Forst, *supra* note 44, at 168–70.

as full-fledged subjects of extraterritorial relations with the ability to assert their rights directly, as well as through their social and state networks. This includes ensuring their access to information about and participation in all decision-making, norm-setting, and institution-designing processes that concern their human rights, including *ex ante* and *ex post* HRIAs and HRDD, as well as providing their direct and affordable access to effective remedies. On the other hand, it requires guarantees of representation of individuals' interests by the state that governs them. These imply measures to correct the asymmetries in international decision-making processes by ensuring fair representation of developing states as equal members of the international community and taking into account the fundamental interests and human rights of people, especially the most vulnerable individuals and social groups, that they are representing.²⁸¹

In this respect, the right to a just global order gives rise not only to remedial institutional obligations (aimed at correcting the injustice of the contemporary institutional scheme), but also to global institutional obligations (focused on filling the gaps in the existing international human rights instruments and creating new normative instruments, institutions, and practices). As demonstrated, not only negative obligations to respect,²⁸² but also positive obligations to protect and fulfill, correspond to the right to a just global order. The obligations to prevent unjust practices by third parties and create a just global institutional scheme, apply not only to actors responsible for violations of their negative duties, but to all global players. Though actors engaged in creating and maintaining unjust practices bear primary obligations to compensate victims for the harms they cause, relational justice cannot be achieved without the engagement of the most vulnerable subjects. Relational justice can be realized only through these subjects' full-fledged participation in significant decision-making, norm-setting, and institution-designing processes. Only collective action involving all stakeholders can, therefore, lead to the significant structural changes that are necessary on local, regional, and global levels.

D. Global Obligations of Distributive Justice

Along with guarantees of relational justice, global human rights obligations call for certain distributive arrangements that are indispensable for the universal enjoyment of basic socio-economic rights. This Section discusses global obligations of distributive justice.

²⁸¹ See Office of U.N. High Comm. for Hum. Rights, Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, ¶ 104(c), U.N. Doc. HR/PUB/06/12 (2006).

²⁸² Pogge justifies a negative duty "toward every other" not to contribute, individually or in cooperation, in creating or maintaining an unjust global structure. WORLD POVERTY, *supra* note 43, at 177. This Article intends to avoid reducing obligations, which correspond to the right to a just global order, to merely corrective duties to compensate for the caused harm.

Although basic equality does not require an equal distribution of resources, wealth, or income either among states or between individuals, it is incompatible with conditions of extreme poverty and extreme inequality. That is why basic equality represents a demand for securing universal access to a decent social minimum, which is a key principle of social and global justice.

These intuitions underlie the international community's recognition of the right to an adequate standard of living.²⁸³ The UDHR and the ICESCR acknowledge this right, along with states' corresponding obligations to "take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."²⁸⁴ In its Comments, the CESCR specifies global obligations to cooperate and assist corresponding to the components of the right to an adequate standard of living (which include the rights to adequate food, water, sanitation, housing, and health).²⁸⁵ Thus, international law initially proceeded from the premises that the right to a decent standard of living should be realized not only locally but also globally, and that not only states, but also other global actors and the international community as a whole, bear duties corresponding to that right.

Although the right to a decent standard of living is at the center of the minimum socio-economic conditions necessary for the realization of a decent social minimum, it does not exhaust them. The implementation of other basic socio-economic rights (including the rights to social security, job security and equal employment, decent work conditions, rest and leisure, just and favorable remuneration, minimum wage, education, and participation in cultural life) constitutes an important guarantee of a decent social minimum.

This raises a question regarding the scope of the guarantees embraced by a global social minimum. The most authoritative theory of justice, developed by Rawls, yields the "maximin" or "difference" principle. This principle calls for an institutional order that maximizes the benefits of the least advantaged, but it does not guarantee that the minimum level of well-being indispensable for enjoying a

²⁸³ Historically, the principle of human dignity has been the starting point for the justification of the human right to a decent standard of living by various, and even competing, approaches. See Elena Pribytkova, *The Human Right to a Dignified Existence: The Ethical Foundations of the Contemporary Legal Order*, in 137 ARSP BEIHEFT, HUMAN DIGNITY AS A FOUNDATION OF LAW 117 (2013).

²⁸⁴ UDHR, *supra* note 2, at art. 25, ¶ 1; ICESCR, *supra* note 27, at art. 11 ¶ 1. The ICESCR places emphasis on the necessity to cooperate internationally for the realization of "the fundamental right of everyone to be free from hunger" as the core element of the right to an adequate food. In particular, it requires "ensur[ing] an equitable distribution of world food supplies in relation to need." ICESCR, *supra* note 27, at art. 11 ¶ 2.

²⁸⁵ See CESCR Gen. Comment No. 4, *supra* note 230, at ¶¶ 10, 13, 19; CESCR Gen. Comment No. 12, *supra* note 130, at ¶¶ 36, 38, 40; CESCR Gen. Comment No. 14, *supra* note 130, at ¶¶ 38, 40, 45, 63; CESCR Gen. Comment No. 15, *supra* note 130, at ¶¶ 30–38.

decent life can be achieved in impoverished countries.²⁸⁶ This Article maintains that the scope of global obligations to secure a decent social minimum should be consistent with the principle of sufficiency. It cannot, therefore, be confined to guarantees necessary for mere survival and freedom from extreme poverty, but should be sufficient to ensure a dignified social existence of individuals. A dignified existence implies individuals' involvement and full-fledged participation in all core social, political, and cultural institutions and practices, including important decision-making processes, as well as access to shared material and intellectual values and an opportunity for their moral and intellectual flourishing.²⁸⁷ In other words, global obligations of distributive justice should enable individuals to enjoy a decent life and basic guarantees of relational justice. The principle of sufficiency calls for global actors' obligations to cooperate in accumulating enough resources for the universal fulfillment of basic socio-economic rights indispensable for leading a decent life.

The principle of sufficiency should be balanced by the principle of a decent minimum sacrifice. Under the latter, the burdens of global obligations should be compatible with the fundamental interests, human rights, and obligations of global actors. Balancing the two principles is possible through a fair allocation of global obligations among all members of the international community.²⁸⁸

As global obligations of relational justice, distributive global obligations include not only interactional but also institutional duties, which are *simultaneous* with domestic obligations and are addressed to all members of the international community.²⁸⁹ Institutional obligations of distributive justice include: (1)

²⁸⁶ RAWLS, *supra* note 37, at 46. Referring to Richard Henry Tawney's metaphor about "a man standing permanently up to the neck in water, so that even a ripple might drown him," Shue demonstrates that the difference principle "can be fulfilled while people continue to drown but with less and less water over their heads." According to Jeremy Waldron's critique, in the original position people would prefer a social minimum to the maximin principle, because the former allows honoring individual achievements while guaranteeing that their basic needs are met. SHUE, *supra* note 43, at 128; Jeremy Waldron, *Rawls and the Social Minimum*, in JEREMY WALDRON, LIBERAL RIGHTS. COLLECTED PAPERS 1981–1991, 262–63, 267 (1993). Influenced by this criticism, in his later works, Rawls himself comes to the recognition of the necessity to ensure a social minimum. See JOHN RAWLS, JUSTICE AS FAIRNESS 127–32 (2001).

²⁸⁷ In this context, the definition of the minimum core obligations suggested by the CESCR—concerning the most significant levels of socio-economic rights (essential foodstuffs, primary health care, basic shelter and housing, most basic forms of education) that should be implemented immediately irrespective of the availability of resources by the state (*see* CESCR Gen. Comment No. 3, *supra* note 234)—seems to be too thin and should be reinterpreted in light of the principle of sufficiency. *See* Pribytkova, *supra* note 78, at 289–99.

²⁸⁸ *Id.* at 293–96.

²⁸⁹ The CESCR and the UNCRC consider global obligations to fulfill socio-economic rights universally to be subsidiary. This is primarily due to the fact that they often reduce the distributive aspect of global obligations of distributive justice to obligations of developed states to provide international

elaborating a global normative framework for ensuring socio-economic guarantees of a decent life; (2) creating and maintaining a system of institutions for securing access to a decent standard of living universally, including institutions for mobilizing resources and providing assistance to those in extreme poverty; and (3) developing judicial, quasi-judicial, and non-judicial individual complaint mechanisms at regional and international levels for holding multiple actors accountable for their breaches of global obligations.

All members of the international community (states, NSAs, IGOs, and individuals) share global human rights obligations to create an institutional system necessary for the realization of a decent social minimum. Researchers and practitioners have demonstrated successfully that the problems of world poverty and the systematic violation of socio-economic rights are caused not by the lack of resources, but rather the lack of a fair system of institutions that regulate their accumulation and use.²⁹⁰ The world community has sufficient means to eradicate poverty, feed all suffering from malnutrition, and provide essential medicine to all dying from poverty-related diseases. Global poverty is avoidable at relatively low costs (and in compliance with the principle of a decent minimum sacrifice) provided that global obligations are fairly distributed among all global actors.²⁹¹

E. Summary

Global human rights obligations that comprehend both duties of result (to realize basic socio-economic rights worldwide and to create a global institutional structure indispensable for their realization) and duties of conduct (to cooperate and assist in their implementation) are primary and simultaneous obligations of multiple actors. They are simultaneous in that they should be implemented in parallel to territorial human rights obligations (Section IV.A). Global obligations are aimed at securing certain minimum guarantees in the domains of relational and distributive justice that are essential for the enjoyment of basic equality (Section

assistance, which are interpreted as developed states' interactional duties (in particular, the duties to achieve a U.N. target of 0.7% of GDP) and to proper use development assistance). *See, for example*, Comm. on Econ., Soc. and Cultural Rights, Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland, ¶14, U.N. Doc. E/C.12/GBR/CO/6 (2016); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Finland, ¶22, U.N. Doc. CRC/C/FIN/CO/4 (2011). For an analysis, see Vandenhoe, *supra* note 18, at 24; VANDENBOGAERDE, *supra* note 6, at 64.

²⁹⁰ GLOBAL RESPONSIBILITY, *supra* note 13, at 45–46; WORLD POVERTY, *supra* note 43, ch. 8; TAN, *supra* note 28, at 25; SACHS ET AL., *supra* note 114, at 1–2. *See also generally* PAUL COLLIER, THE BOTTOM BILLION: WHY THE POOREST COUNTRIES ARE FAILING AND WHAT CAN BE DONE ABOUT IT (2007).

²⁹¹ As Pogge and Sengupta summarize, “never in human history has severe poverty been so easily and completely eradicable as in the present period.” Pogge & Sengupta, *supra* note 21, at 85–86. *See also* POLITICS, *supra* note 43, at 21–24; SACHS ET AL., *supra* note 114, at 1–2; MANUEL ET AL., *supra* note 30, at 42–43; LAWSON ET AL., *supra* note 32, ch. 3–4.

IV.B). Relational justice guarantees should ensure individuals' full-fledged participation in all key global institutions and practices, including important decision-making processes that affect their exercise of socio-economic rights (Section IV.C). A global distributive scheme should embody a decent social minimum (Section IV.D).

V. CONCLUSION

This Article addressed underexamined issues surrounding global obligations. It sought to refute prevailing prejudices about such obligations in contemporary legal discourse and practice and outline the main contours of the legal conception of global obligations.

The major conclusions of this Article are as follows. The idea of human-centricity, which sees a person as the ultimate unit of both moral and legal concern, is embedded in the International Bill of Human Rights and serves as a justifying basis for global obligations. Global obligations are morally justified human rights obligations. They should receive legal recognition, regulation, and implementation within the global polycentric community of multiple autonomous actors. This is a significant precondition for the shift from a state-centered to a human-centered global order, in which the state and global civil society should serve as two important "channels" for representing the interests and protecting human rights of individuals in the global domain. Two important steps for this shift are: (1) the recognition of individuals as independent subjects of extraterritorial legal relations capable of demanding the realization of their human rights directly from global actors and holding the latter accountable; and (2) the allocation of extraterritorial obligations, including global obligations, to all members of the international community—states, IGOs, NSAs, and individuals—which should be acknowledged as primary agents of global justice and as duty-bearers of extraterritorial obligations to respect, protect, and fulfill socio-economic rights. Additionally, global obligations are simultaneous, which means that they should be implemented in parallel to territorial human rights obligations. In their interactional and institutional aspects, global obligations comprehend both duties of result (to realize socio-economic rights necessary for the enjoyment of a decent standard of living worldwide and to create a just global institutional structure indispensable for their realization), and duties of conduct (to cooperate and to assist in the implementation of socio-economic rights). Finally, global human rights obligations are aimed at ensuring certain minimum guarantees in domains of relational and distributive justice that are essential for the enjoyment of basic equality. Relational justice guarantees should ensure individuals' full-fledged participation in all key global institutions and practices, including important decision-making processes, while a global distributive scheme should embody a decent social minimum universally.